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VOL. I, PP. 1 TO 604

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 460

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 12, 1939

CERTIORARI GRANTED NOVEMBER 13, 1939

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6707

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE FALK CORPORATION,
Respondent.

Counsel for Petitioner:
MR. CHARLES FAHY,
MR. ROBERT B. WATTS,

Counsel for Respondent:
MR. LEON B. LAMFROM,
MR. A. J. ENGELHARD,

Petition for Enforcement of Order of National Labor Relations Board.

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And on, to wit, the 30th day of June, 1938, there was filed in the office of the Clerk of this Court, a petition for enforcement of an order of National Labor Relations Board, which said petition for enforcement is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, Filed June 30, 1938.

For the Seventh Circuit.

October Term, 1937.

National Labor Relations Board,
Petitioner,
vs.
The Falk Corporation,
Respondent.
No. 6707.

PETITION FOR ENFORCEMENT OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

The National Labor Relations Board, hereinafter called the Board, pursuant to the authority conferred upon it by an Act of Congress approved July 5, 1935 (49 Stat. 449, c. 372, 29 U. S. C. sec. 151 et seq.), known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by the Board in a proceeding by it against respondent, The Falk Corporation. Said proceeding is known upon the records of the Board as Cases Nos. R-278, and C-293, the title thereof being "In the Matter of The Falk Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528."

In support of this petition, the Board respectfully shows:

(1) Respondent is and at all times hereinafter mentioned was a corporation organized under and existing by virtue of the laws of the State of Wisconsin, having its main office and plant in Milwaukee, Wisconsin, where the unfair labor practices occurred.

(2) By reason of the matters alleged in paragraph (1)

hereof, this Court has jurisdiction of this petition by virtue of section 10 (e) of the National Labor Relations Act.

(3) A charge and an amended charge having been filed on May 24, 1937, and August 2, 1937, respectively, with the Board through its Regional Director for the Twelfth Region, by Steel Workers Organizing Committee in behalf of Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, hereinafter called the Amalgamated, the Board, on August 4, 1937, issued a complaint in said case No. C-293, alleging that respondent had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the Act, Thereafter, on August 2, 1937, a petition for investigation and certification was filed with the Board through said Regional Director by Steel Workers Organizing Committee in behalf of the Amalgamated (Case No. R-278). Thereafter the Board made an order directing an investigation in said Case No. R-278. Hearings in said two cases were noticed for August 16, 1937. Thereafter, on August 12, 1937, respondent filed an answer to the complaint in said Case No. C-293. Thereafter, on August 13, 1937, Independent Union of Falk Employees, hereinafter called the Independent, and International Union of Operating Engineers, Local 311, hereinafter called the Operating Engineers, each filed a petition to intervene. Thereafter, said petitions were granted.

(4) On August 14, 1937, the Board made an order consolidating said Cases Nos. C-293, and R-278 for the purpose of hearing and designating James C. Batten Trial Examiner.

(5) Thereafter, on August 16 through 20, and 23 through 25, 1937, a hearing was held before said Trial Examiner in Milwaukee, Wisconsin. At the opening of the hearing, the petitions to intervene, referred to in paragraph (3) hereof, were renewed and granted. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded all parties. At the conclusion of the hearing, Board counsel's motion that the complaint be amended to conform to the proof was granted.

(6) Thereafter, on November 2, 1937, said Trial Examiner filed an Intermediate Report in which he found that respondent had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the Act, and made certain recommendations. Respondent and the Independent, on November 27, 1937, and November 29, 1937,

respectively, each filed exceptions to said Intermediate Report.

(7) Thereafter, on February 25, 1938, a hearing was held before the Board in Washington, D. C., for the purpose of oral argument. Respondent, the Operating Engineers, and the Independent were represented by counsel, who argued the case before the Board. Thereafter, briefs were submitted by respondent and the Independent.

(8) Thereafter, on April 18, 1938, the Board, being sufficiently advised in the premises and being of the opinion, upon all the testimony and evidence, that respondent had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the Act, found the exceptions, referred to in paragraph (6) hereof, without merit and stated its findings of fact and conclusions of law and made its decision, order, and direction of election in said proceeding. Said order is directed to respondent, and its officers, agents, successors and assigns and reads as follows:

Order.

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Falk Corporation, and its officers, agents, successors and assigns shall:

1. Cease and desist:

(a) From dominating or interfering with the formation or administration of the Independent Union of Falk Employees, or any other labor organization of its employees, and from contributing support to the Independent Union of Falk Employees, or to any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Independent Union of Falk Employees as the representative of any of its em-

ployees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the Independent Union of Falk Employees as such representative;

(b) Immediately post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty (30) consecutive days stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that it has withdrawn all recognition from the Independent Union of Falk Employees as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and that it has completely disestablished said organization as such representative;

(c) Notify the Regional Director for the Twelfth Region in writing within ten (10) days from the date of this Order what steps it has taken to comply herewith.

3. The complaint is hereby dismissed (1) in so far as it alleges that the respondent committed unfair labor practices within the meaning of Section 8 (3) of the Act in discharging Anton Kinch, and (2) in so far as it alleges that the respondent has engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act.

(9) Thereafter, on April 18, 1938, said decision, order, and direction of election was served upon respondent, the Operating Engineers, and the Independent by sending copies thereof postpaid, bearing Government frank, by registered mail, to Lamfrom, Tighe, Engelhard & Peck, respondent's attorneys, A. G. Goldberg, Operating Engineers' attorney, and Alexander, Burke & Clark, Independent's attorneys, all in Milwaukee, Wisconsin.

(10) Said order of the Board, set forth in paragraph (8) hereof, is and at all times since its issuance has been in full force and effect.

Wherefore, the Board petitions this Honorable Court for the enforcement of its order of April 18, 1938, set forth in paragraph (8) hereof, and, pursuant to sections 10 (e) and 9 (d) of the National Labor Relations Act, is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, order, and direction of election of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript and upon the order made thereupon a decree enforcing in whole said order of the Board and requiring respondent and its officers, agents, successors and assigns to comply therewith.

Edwin S. Smith,
Member,
Donald Wakefield Smith,
Member,
National Labor Relations Board.

Dated at Washington, D. C., this 27 day of June, 1938.

Robert Watts,
Acting General Counsel.

District of Columbia, } ss.

Edwin S. Smith and Donald Wakefield Smith, being first duly sworn, state that they are members of the National Labor Relations Board; that they have read the foregoing petition subscribed by them and have knowledge of the contents thereof; and they further on oath say that the statements made therein are true to the best of their knowledge and belief.

Edwin S. Smih,
Member.
Donald Wakefield Smith,
Member.

Subscribed and sworn to before me this 27th day of June, 1938.

John E. Lawyer,
(Seal) *Notary Public, District of Columbia.*

My commission expires September 8, 1939.

Endorsed: Filed June 30, 1938. Frederick G. Campbell, Clerk.

Filed July 19, 1938.

And afterwards, to wit, on the 19th day of July, 1938, there was filed in the office of the Clerk of this Court an answer of respondent to the petition for enforcement, which said answer of respondent is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

(Caption—6707)

ANSWER OF THE RESPONDENT, THE FALK CORPORATION, TO THE PETITION OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now comes the respondent, The Falk Corporation, by its attorneys, and for its answer to the petition of the National Labor Relations Board, for the enforcement of an order of the said Board, respectfully shows and alleges:

That the order of the petitioner, dated April 18th, 1938, which the petitioner is asking your Honorable Court to enforce, was and is contrary to law, null and of no effect, for the following reasons, among others:

(a) Petitioner's Conclusions of Law, upon which said Order was based, are erroneous.

(b) Petitioner's Findings of Fact, upon which said Order was based, are not supported by substantial evidence.

(c) That such Findings of Fact, which are supported by substantial evidence, are insufficient to support the Order.

Wherefore, the respondent respectfully prays the Court to deny to the petitioner, enforcement of the said Order of April 18th, 1938.

The Falk Corporation,
Respondent.
By Harold S. Falk,
Vice-President.

Leon B. Lamfrom,
Leon B. Lamfrom,
A. J. Engelhard,
A. J. Engelhard,
Attorneys for Respondent.

State of Wisconsin }
Milwaukee County } ss.

Harold S. Falk, being first duly sworn, on oath deposes and says that he is an officer, to-wit: the Vice-President of The Falk Corporation, the respondent in the above entitled action, and makes this verification on its behalf, being duly authorized so to do; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to such matters, he believes it to be true.

Harold S. Falk.

Subscribed and sworn to before me this 18 day of July, 1938.

Harold W. Rowe,
(Seal) *Notary Public.*
Milwaukee Co. Wis.

My commission expires Dec. 21, 1941.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

October Term 1937.

National Labor Relations Board,
Petitioner,
vs.
The Falk Corporation,
Respondent.
} No. 6707.

State of Wisconsin }
Milwaukee County } ss.

Wirth Koenig, being first duly sworn, on oath deposes and says that he is a resident of the Village of Shorewood, Milwaukee County, Wisconsin, over 21 years of age.

That on the 18th day of July, 1938, in the City of Milwaukee, Wisconsin, he deposited in the Post Office in Milwaukee, Wisconsin, a copy of the within and annexed Answer of the Respondent, The Falk Corporation, securely enclosed in an envelope, with the postage duly prepaid, and sent by Registered Mail, addressed to the Petitioner, National Labor Relations

Board, at the said Petitioner's post office address, to-wit: Washington, D. C.

That attached hereto is a registry receipt of the United States Post Office of Milwaukee, Wisconsin, which affiant received at said Post Office when affiant deposited the said envelope containing the copy of said Answer.

Wirth Koenig.

Subscribed and sworn to before me this 18th day of July, 1938.

Marguerite M. Baker,
Notary Public.
Milwaukee Co., Wis.

(Seal)

My commission expires Oct. 20, 1940.

(Postmark of) Milwaukee, Wis, Registered Jul 18 1938
Form 3806 (Rev. Jan. 21, 1935)
Receipt for Registered Article No. 3935
Registered at the Post Office indicated in the postmark
Fee paid 15 cents Class postage 1.....
Declared value N O Surcharge paid, $.....
Return Receipt fee √ Spl. Del'y fee.....
Delivery restricted to addressee:
in person....., or order..... Fee paid.....

Accepting employee will place his initials in space indicating restricted delivery.

Postmaster, per A. K..... (Mailing Office)

The sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry Fees and Indemnity.—Domestic registry fees range from 15 cents for indemnity not exceeding $5 up to $1 for indemnity not exceeding $1,000. The fee on domestic registered matter without intrinsic value and for which indemnity is not paid is 15 cents. Consult postmaster as to the specific domestic registry fees and surcharges and as to the registry fees chargeable on registered parcel-post packages for foreign countries. Fees on domestic registered C. O. D. mail range from 25 cents to $1.20. Indemnity claims must be filed within one year (C. O. D. six months) from date of mailing.

U. S. Government Printing Office 35—6852

(Endorsed) In the United States Circuit Court of Appeals * * (Caption—6707) * * Answer of the Respondent, The Falk Corporation, to the Petition of the National Labor Relations Board—Filed Jul 19 1938. Frederick G Campbell, Clerk.

4 BOARD EXHIBIT NO. 3.

UNITED STATES OF AMERICA

Before the National Labor Relations Board

Twelfth Region.

In the Matter of The Falk Corporation and Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528.	Case No. XII—C-57 Case No. XII—R-35

NOTICE OF HEARING.

There has heretofore been filed with the Regional Director for the National Labor Relations Board of the Twelfth Region a petition by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, an unincorporated association and a lawful labor organization affiliated with the Committee for Industrial Organization alleging that a question of commerce has arisen concerning the representation of all the employees, except supervisory employees, draftsmen, employees in the general office, and employees in the payroll department, at the Milwaukee, Wisconsin, plant owned and operated by The Falk Corporation, a corporation in the City of Milwaukee, County of Milwaukee, State of Wisconsin, and requesting that pursuant to authority granted in Section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify the name or names of the representatives that have been designated by said employees.

A copy of said petition is attached hereto.

5 It appearing to the National Labor Relations Board that a question affecting commerce has arisen concerning the representation of all the employees of The Falk Corporation; except supervisory employees, draftsmen, employees in the general office, and employees in the payroll department, in the said Milwaukee plant;

You Are Hereby Notified that, pursuant to Section 9(c)

of the National Labor Relations Act, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1, As Amended, Article IV, Section 3 and Article III, Section 5, on the sixteenth day of August, A. D. 1937 at 10:00 a. m. in the forenoon, in the Milwaukee County Court House, Room 409, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, upon the question of representation affecting commerce which has arisen, at which time and place you will have a right to appear in person or otherwise and give testimony.

You are further notified that on the said sixteenth day of August, A. D. 1937, at the hour and place aforesaid, and before the Trial Examiner to be designated by the National Labor Relations Board in accordance with the Rules and Regulations, Series 1, As Amended, Article IV, Section 3 and Article II, Section 23, a hearing will be conducted on the allegations set forth in the Complaint attached hereto, at which time and place you will have a right to appear in person or otherwise and give testimony.

6 Copies of the original and amended charge are attached hereto.

You are further notified that you have the right to file with the Regional Director for the Twelfth Region acting in this matter as the agent of the National Labor Relations Board, an answer to the Complaint attached hereto within five days of the service of the said Complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, As Amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly invited to Articles II and III of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its Notice of Hearing, to be signed by the Regional Director for the Twelfth Region on this 4th day of August, 1937.

Nathaniel S. Clark,
Nathaniel S. Clark,
Director, Twelfth Region,
519 Brumder Building,
135 West Wells Street,
Milwaukee, Wisconsin.

Copies of within documents received this 4th day of August, 1937.

Meyer Adelman,
for Lodge 1528.
Lamfrom, Fuglie Engelhardt & Reilly,
Attys. for Resp.

7 NATIONAL LABOR RELATIONS BOARD.
(Caption—XII-C-57 and XII-R-85)

AFFIDAVIT OF SERVICE.

Irma E. Struebing, Employee, Twelfth Region, being duly sworn, deposes and says that on the fourth day of August, 1937, as agent of the National Labor Relations Board, she served a true and correct copy of the within Notice of Hearing, by sending by registered letter such copy to

1. Independent Union of Falk Employees, c/o The Falk Corporation, 3001 W. Canal Street, Milwaukee, Wisconsin, and that thereafter she received from the United States Post Office a return in the form of registered letter receipt numbered 163357, which return receipt is attached hereto and made a part hereof.

Irma E. Struebing.
Irma E. Struebing.

Subscribed and sworn to before me this 5th day of July, 1937.

Walter J. Morgan,
Notary Public.

(Seal)

8 Post Office Department
Official Business

Registered Article
(Stamp) No. 163357
Insured Parcel
No. .....

Penalty for Private Use
To Avoid Payment of
Postage, $300.
Postmark of Delivering
Office
(Milwaukee)
(430 P M)
(Aug 6)
(1937)
(Wis.)

And Date of Delivery

Return to National Labor Relations Board
(Name of Sender)
Street and Number,
or Post Office Box, 519 Brumder Building, 135 W. Wells St.
Milwaukee,
Wisconsin.

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Fred Wilson
(Signature or name of addressee)
J. A. Nowak
(Signature of addressee's agent)

Date of Delivery Aug 6 1937
Form 3811

9 UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twelfth Region

In the matter of The Falk Corporation and Amalgamated Association of Iron, Steel and Tin Workers of N. A., Lodge No. 1528, Petitioners.	Case No. XII R 85

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Name of employer The Falk Corporation.

Address 3001 W. Canal, Milwaukee, Wisconsin.

General nature of business Designing, manufacturing, assembly, sale and distribution of castings and various types of gears.

Approximate number of employees 1600. Description of the bargaining unit which petitioner claims is appropriate All employees at the Milwaukee plant except supervisory employees, draftsmen, employees in the general office and employees in the payroll department.

Number and classification of employees which representatives on whose behalf petition is filed claim to represent Approximately 1400 employees at the Milwaukee plant except supervisory employees, draftsmen, employees in the general office and employees in the payroll department.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit Independent Union of Falk Employees.

Any other facts which petitioner considers relevant

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that:

It is alleged that the Independent Union of Falk Employees is a labor organization created in violation of Section 8, subsection (2) of the National Labor Relations Act.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Meyer Adelman,
Meyer Adelman, Field Director
Steel Workers Organizing Committee
3026 Plankington Arcade
Milwaukee, Wisconsin.

Subscribed and sworn to before me this 2d day of August, 1937, at Milwaukee, Wisconsin.

Fred J. Saddy,
Notary Public.

My Commission Expires July 27, 1941.

10 UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twelfth Region

In the Matter of The Falk Corporation and Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528.	Case No. XII-C-57

COMPLAINT.

It having been charged by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, by Meyer Adelman, that The Falk Corporation, hereinafter called the respondent, engaged in manufacturing at Milwaukee, Wisconsin, has engaged in and is now engaged in certain

unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby alleges the following:

1. The respondent was organized and incorporated on June 3, 1895, as The Falk Manufacturing Company. Thereafter on February 18, 1899, the name of the respondent company was changed to The Falk Company. The Falk Company was dissolved in May, 1921, and the present respondent, namely, The Falk Corporation was organized. Since its original organization, the respondent has been organized and existing under the laws of the State of Wisconsin, and is now and has continuously been engaged in the operation of
11 its plant at Milwaukee, Wisconsin, hereinafter called the Milwaukee plant, in the design, manufacture, assembly, sale and distribution of the following products: Steel castings, helical gears, speed reducers, speed increasers, couplings, Motoreducers, marine drives, rolling drives, pinion stands, flexible couplings, contract machine work, and many other varied machine products. The respondent in the operation of its business maintains and operates sales agencies, district offices and sales representatives in 50 cities of the United States, 6 cities in the various provinces of Canada, in 2 cities in the Republic of Mexico, and in the Philippine Islands, Hawaii, Cuba, and South Africa.

2. The respondent, in the course and conduct of its business and in the operation of its Milwaukee plant, causes and has continuously caused large quantities of materials consisting of pig iron, scrap steel, bar steel, coal, silica sand, fire clay, grey iron castings, nuts, bolts, screws, rivets, electric and gasoline motors, Diesel engines, roller bearings, Marine Thrust bearings, lumber, copper, tin, sheet metal, various types and kinds of wires, paint, chemicals, cables, pulleys, and various other raw materials used by it in the manufacture of its products to be purchased and transported in interstate commerce from and through states of the United States other than the State of Wisconsin to the Milwaukee plant in the State of Wisconsin; and causes and has continuously caused large quantities of the finished products manufactured and produced by it to be sold, transported, and distributed in interstate commerce from the Milwaukee plant in the
12 State of Wisconsin into and through states of the United States other than the State of Wisconsin and into foreign countries.

3. The Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local 1528, hereinafter called the Union, affiliated with the Committee for Industrial Organization, is a labor organization as defined in Section 2, subsection (5) of the Act.

4. A unit, for the purpose of collective bargaining composed of all the employees employed by the respondent at the Milwaukee plant, except supervisory employees, draftsmen, employees in the general office, and employees of the payroll department, would insure to employees of the respondent at the Milwaukee plant the full benefit of their right to self-organization and to collective bargaining and would otherwise effectuate the policies of the National Labor Relations Act and is a unit appropriate for the purposes of collective bargaining.

5. A majority of the employees in the said unit have designated the Union as its representative for the purpose of collective bargaining with the respondent, such designation having been made by signing of application cards and membership in the said Union. By virtue of Section 9 (a) of said Act, the Union is and has continuously been the exclusive representative of all employees in said unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

6. At various times respondent, when requested by the Union, has refused to bargain collectively with the Union as the exclusive bargaining agency for all of its employees as above enumerated. Said employees together constitute an appropriate bargaining unit. By such refusal to bargain collectively as hereinbefore stated, the respondent has thereby engaged in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subsection (5) of said Act.

7. On or about December 31, 1936, while engaged in operations at its Milwaukee plant, as aforesaid, the respondent by its officers and agents discharged one Anton Kinch for the reason that the said Anton Kinch had engaged in concerted activities with other employees at the Milwaukee plant for their mutual air and protection and collective bargaining, and for the further reason of discouraging concerted activities on the part of other employees at the said Milwaukee plant.

8. Respondent refused and does not refuse to reinstate the said Anton Kinch for the reason that he engaged in concerted

activities with other employees in the respondent's Milwaukee plant for the purpose of collective bargaining and other mutual aid and protection, and for the further reason of discouraging concerted activities on the part of other employees. By the discharge and refusal to reinstate the said Anton Kinch as above set forth, respondent did discriminate and is discriminating in regard to hire and tenure of employment of the said Anton Kinch, did discourage and is discouraging membership in the Union, and did thereby engage and does now thereby engage in unfair labor practices within the meaning of Section 8, subsection (3) of the said Act.

14 9. The respondent, by its officers and agents, while operating as hereinbefore described, up to and including the date of the filing of this complaint, dominated, fostered, encouraged and interfered with the formation, enlistment of membership, and administration of a labor organization of its employees known as the Independent Union of Falk Employees and did and does now contribute financial and other support thereto. Said interference did and does have the purpose, intent, and effect of intimidating, coercing, restraining and interfering with the lawful exercise of the rights of its employees guaranteed in Section 7 of the Act. By virtue of such conduct, the respondent has and does now violate Section 7 of the National Labor Relations Act and is thereby engaging in unfair labor practice within the meaning of Section 8, subsection (2) of said Act.

10. By all of the above said acts and each of them, by the discharge of the said Anton Kinch, by the refusal to reinstate the said Anton Kinch, by the domination or interference with the formation or administration of a labor organization known as the Independent Union of Falk Employees, and by the refusal to bargain collectively, the respondent did interfere with, restrain, coerce, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them did engage in and is now engaging in unfair labor practices within the meaning of Section 8, subsection (1) of said Act.

15 11. The activities of respondent set forth in paragraphs 6, 7, 8, 9 and 10 above, occurring in connection with the operations of respondent described in paragraphs 1 and 2 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and

have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

12. The aforesaid acts of the respondent enumerated in paragraphs 6, 7, 8, 9 and 10 above, constitute unfair labor practices affecting commerce within the meaning of section 8, subsections (1), (2), (3) and (5), and Section 2, subsections (6) and 7) of said Act.

In Witness Whereof the National Labor Relations Board as of August 4, 1937, issues its Complaint against The Falk Corporation, respondent herein.

Nathaniel S. Clark,
Nathaniel S. Clark,
Director, Twelfth Region,
519 Brumder Building,
135 West Wells Street,
Milwaukee, Wisconsin.

16 UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twelfth Region.

In the Matter of
The Falk Corporation
and
Amalgamated Association of Iron, Steel and Tin Workers of N. A. Lodge No. 1528.
} Case No. XII-C-57.

CHARGE.

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that The Falk Corporation, 3001 W. Canal, Milwaukee, Wisconsin, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act in that (1) The Falk Corporation, by its officers or agents, has dominated or interfered with the formation or administration of a labor organization or plan of employee representation among its employees known as the Falk Corporation Works Council, and has contributed financial or other support to it;

(2) The Falk Corporation, by its officers or agents, has

dominated or interfered with the formation or administration of a labor organization among its employees known as the Independent Union of Falk Employees, and has contributed financial or other support to it;

(3) The Falk Corporation, by its officers or agents, on or about April 18, 1937, did discharge or lay off one Fred Douglas, one of its employees, and prior to said discharge did transfer the said Douglas from his regular work to other and less desirable duties, for the purpose of discriminating against the said Douglas and in order to discourage membership in a labor organization known as the Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge No. 1528, or in order to encourage membership in said Independent Union of Falk Employees, or both;

(4) The Falk Corporation, by its officers or agents, has threatened and warned its employees against becoming members of or otherwise affiliating themselves with said Lodge 1528 of said Amalgamated Association, and in various other ways manifested its opposition to such membership or affiliation, and in various ways has encouraged its employees to become members of, or otherwise to affiliate themselves with, said Independent Union of Falk Employees.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Meyer Adelman,
Field Director, Steel Workers Organizing Committee,
3026 Plankinton Arcade,
Milwaukee, Wisconsin.

Subscribed and sworn to before me this 24 day of May, 1937.

Walter J. Morgan,
(Seal) *Notary Public.*

(Stamp) Received 2:30 May 28 1937 12th Region NLRB.

17 UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

12th Region.

In the Matter of
The Falk Corporation,
and
Amalgamated Association of Iron, Steel and Tin Workers of N. A. Lodge No. 1528.

Case No. XII-C-57.

AMENDED CHARGE.

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that The Falk Corporation, 3001 W. Canal, Milwaukee, Wisconsin has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) (3) and (5) of said Act, in that

(1) The Falk Corporation, by its officers or agents, has dominated or interfered with the formation or administration of a labor organization or plan of employee representation among its employees known as the Independent Union of Falk Employees, and has contributed financial or other support to it;

(2) On or about December 31, 1936, the said Company by its officers and agents, did discharge one Anton Kinch, an employee of its Milwaukee Plant, for the reason that the sa Anton Kinch had engaged in concerted activities with fellow employees for the purposes of collective bargaining and other mutual aid and protection and for the further purpose of discouraging other employees from becoming or remaining members of a labor organization of their own choice.

(3) The Falk Corporation, by its officers or agents, has threatened and warned its employees against becoming members of or otherwise affiliating themselves with Lodge 1528 of the Amalgamated Association of Iron, Steel & Tin Workers of North America, and in various other ways manifested its opposition to such membership or affiliation, and in various ways has encouraged its employees to become members

of, or otherwise to affiliate themselves with, said Independent Union of Falk Employees.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Meyer Adelman,
Meyer Adelman,
Field Director Steel Workers Organizing Committee,
3026 Plankinton Arcade,
Milwaukee, Wisconsin.

Subscribed and sworn to before me this 2d day of August, 1937.

Fred J. Soddy,
(Seal) *Notary Public.*

My Commission Expires July 27, 1941.

37 BOARD EXHIBIT NO. 5.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.
(Caption—XIIC57 and XIIR85)

ANSWER OF RESPONDENT, THE FALK CORPORATION.

To the National Labor Relations Board:

Now comes The Falk Corporation, a Wisconsin corporation, and in answer to the complaint filed in the above proceedings by the National Labor Relations Board, admits, denies and alleges as follows:

1. Answering paragraph 1 of said complaint, respondent admits each and every allegation therein contained.

2. Answering paragraph 2 of said complaint, respondent admits each and every allegation therein contained.

3. Answering paragraph 3 of said complaint, respondent admits each and every allegation therein contained.

4. Answering paragraph 4 of said complaint, respondent

denies that the unit described in said paragraph 4, for the purpose of collective bargaining, would insure to the employees of the respondent at the Milwaukee plant the full benefit of their right to self organization and to collective bargaining; denies that said unit would otherwise effectuate the policies of the National Labor Relations Act; and denies that said unit is an appropriate unit for the purposes of collective bargaining with the respondent.

38 5. Answering paragraph 5, respondent denies that the majority of the employees in the unit described in paragraph 4 have designated the Union as their representative for the purpose of collective bargaining with the respondent; denies that such designation has been made by signing of application cards and membership in said Union; denies that by virtue of Section 9 (a) of said Act, the Union is and has continuously been the exclusive representative of all employees, in said unit, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

6. Answering paragraph 6, respondent denies that it at any time was requested by said Union to recognize the said unit as the exclusive bargaining agency for all of respondent's employees as enumerated in paragraph 4, or of any other unit of employees; denies that it has ever refused to bargain collectively with said Union as the exclusive bargaining agency for all of its employees as above enumerated; denies that the employees of the unit described in paragraph 4 constitute an appropriate bargaining unit; denies that respondent has engaged in or is engaged in any unfair labor practices within the meaning of Section 8, subsection (5) of the National Labor Relations Act. Alleges that it has and is now bargaining collectively with such collective bargaining agency which had the exclusive legal right under the provisions of the National Labor Relations Act to bargain collectively.

7. Answering paragraph 7, respondent admits that on December 31, 1936, while engaged in operations at its Milwaukee plant, respondent by its officers and agents discharged one Anton Kinch; and, in that connection, respondent alleges that the discharge of said Anton Kinch was for a lawful cause.

39 Further answering paragraph 7, respondent specifically denies that the discharge of said Anton Kinch was for any of the purposes or reasons stated in said paragraph 7.

8. Answering paragraph 8, respondent specifically denies that it has refused, or that it does now refuse to reinstate said Anton Kinch for the reason that he engaged in concerted activities with other employees in the respondent's Milwaukee plant, for the purpose of collective bargaining and other mutual aid and protection; specifically denies that the respondent refused, or does now refuse to reinstate the said Anton Kinch for the reason of discouraging concerted activities on the part of other employees.

Further answering paragraph 8, respondent specifically denies that the discharge of said Anton Kinch, and the refusal to reinstate the said Anton Kinch, if any, would in any manner discriminate or is discriminating in regard to hire and tenure of employment of said Anton Kinch, or would discourage or is discouraging membership in the Union.

Further answering paragraph 8, respondent specifically denies that by the discharge of said Anton Kinch, and the refusal, if any, to reinstate said Anton Kinch, that it thereby engaged in and does now thereby engage in unfair labor practices within the meaning of Section 8, subsection (3) of the National Labor Relations Act.

9. Answering paragraph 9, respondent specifically denies that it, by its officers and agents, at any time, dominated, fostered, encouraged or interfered with the formation, enlistment of membership, or administration of a labor organization of its employees known as Independent Union of Falk Employees.

Further respondent specifically denies that it did and does now contribute financial or other support to a labor organization of its employees known as Independent Union of Falk Employees.

Further answering paragraph 9, respondent, specifically denies that it, by its officers and agents, at any time, engaged in, or is engaging in any act which did or does have the purpose, intent and effect of intimidating, coercing, restraining and interfering with the lawful exercise of the rights of respondent's employees, guaranteed in Section 7 of the National Labor Relations Act.

Further answering paragraph 9, respondent specifically denies that it has and does now violate Section 7 of the National Labor Relations Act, and specifically denies that it has engaged or is engaging in unfair labor practices within the meaning of Section 8, subsection (2) of said Act.

10. Answering paragraph 10, respondent specifically denies that it engaged in or has engaged in any acts set forth in paragraph 9; specifically denies that it has refused to reinstate the said Anton Kinch; specifically denies that it dominated or interfered with the formation or administration of the labor organization known as Independent Union of Falk Employees; specifically denies that it refused to bargain collectively with the lawfully designated representative of its employees; specifically denies that it did interfere with, restrain, coerce, or is interfering with, coercing or restraining its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act; and, specifically denies that it by any act whatsoever did engage in or is now engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the National Labor Relations Act.

11. Answering paragraph 11, respondent specifically denies that it has engaged in any activities which have a close, intimate and substantial relation to trade, traffic and com-
41 merce among the several states, and which have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

12. Answering paragraph 12, respondent specifically denies that it has engaged in any conduct constituting unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (2), (3), and 5, and Section 2, subsections (6) and (7) of said National Labor Relations Act.

Further answering said complaint, respondent says that the complaint of the National Labor Relations Board against The Falk Corporation, respondent herein, should be dismissed.

The Falk Corporation,
By Harold S. Falk,
Vice-President.

State of Wisconsin, }
Milwaukee County. } ss.

Harold S. Falk, being first duly sworn, on oath deposes and says that he has read and knows the contents of the above and foregoing answer, and that the same is true to his own knowledge, excepting as to matters therein alleged upon information and belief, and as to such matters believes it to be true; that the reason this verification is made by this affi-

ant, is that the respondent is a corporation and this affiant an officer thereof, to-wit: its Vice-President; that the source of his affiant's knowledge, information and belief is the general conduct of the affairs of the corporation with reference to matters contained in the answer.

Harold S. Falk.

Subscribed and sworn to before me this 12 day of August, 1937.

Marguerite M. Baker,
(Seal) *Notary Public, Milwaukee Co. Wis.*

My comm. expires Oct. 20, 1940.

42 Endorsed: Before the National Labor Relations Board. * * (Caption—XIIC57 and XIIR85) * * Answer of The Falk Corporation. Lamfrom, Tighe, Engelhard & Peck, Attorneys and Counselors at Law, 1416-1427 Bankers Building, 208 East Wisconsin Avenue, Milwaukee, Wis.

493 OFFICIAL REPORT OF PROCEEDINGS.

Filed June 30, 1938.

U. S. C. C. A.—7.

Frederick G. Campbell, Clerk.

496 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

(Caption—XII-C-57 and XII-R-85)

Room 409 Milwaukee County Courthouse,
Milwaukee, Wisconsin,
August 16th, 1937.

The above-entitled matter came on for hearing, pursuant to notice, at 10 o'clock A. M.

Before:

James C. Batten, Trial Examiner.

Appearances:

Robert R. Rissman and S. G. Lippman, Attorneys, on behalf of the National Labor Relations Board.

A. G. Goldberg, 511 Warner Building, Milwaukee, Wisconsin, appearing for International Union of Operating Engineers, Local 311.

Giles F. Clark, of Alexander, Burke & Clark, 110 East Wisconsin, Milwaukee, Wisconsin, appearing for Independent Union of Falk Employees.

Lamfrom, Tighe, Engelhard & Peck, by Mr. Leon B. Lamfrom and Mr. A. J. Engelhard, appearing for The Falk Corporation.

497 Proceedings.

Trial Examiner Batten: Gentlemen, are we ready to proceed?

Mr. Rissman: I think so.

Trial Examiner Batten: Before we proceed, I would like to advise all the parties that the Board's reporter makes the only official transcript of these proceedings, and the citation to pages and arguments based upon the record will recite the official transcript in all references to the record.

The Board will not certify any transcript other than its official transcript for use in any court or litigation.

Now, there is a matter which often arises in these hearings, and that is the so-called "off the record" discussions. I wish to advise at this time that the reporter will not take down argument with respect to motions or rulings, but if counsel at any time desire their argument to be included, if

they will just so state, the reporter will be glad to include them.

Now, that does not mean that the grounds which are given by counsel for the motion or objection, or with respect to rulings will not be included. I am referring only to general argument so that if at any time you desire that in the record, if you will just so state, they will be included.

498 Is there any objection to such procedure?

Mr. Lamfrom: That is perfectly satisfactory to the Falk Corporation.

I have ordered on behalf of The Falk Corporation a transcript from the official reporter, and without any discourtesy to anybody I have asked our own court reporter also to be here to take down the proceedings for us, because we are used to handling cases sometimes on a daily transcript.

I take it that is agreeable.

Trial Examiner Batten: Well, as I say, the only restriction is, the official transcript and the one certified by the Board and the one to be used in all proceedings is the one taken by the official reporter.

Mr. Lamfrom: I understand that perfectly, and this is merely for our own convenience.

I told Mr. Rissman upon payment to us of 97 cents per folio he may inspect it.

Mr. Rissman: I did not accept the offer.

Mr. Lamfrom: I may reduce it.

Trial Examiner Batten: Are you ready to proceed?

Mr. Rissman: We have an intervening petition from the Independent Union but I don't see counsel here this morning.

Mr. Lamfrom: We have here such petition and I take it that it may be advisable to wait just a few minutes.

Trial Examiner Batten: Might I ask, have the persons 499 desiring to intervene filed with the Board their petition?

Mr. Rissman: Yes, Mr. Examiner, they have, and I intend to introduce the petitions as an exhibit, but I have also advised those persons to renew their motion before you this morning.

Trial Examiner Batten: Perhaps we had better wait a few minutes.

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

Now, are the attorneys here representing the interveners?

Mr. Rissman: They are, Mr. Examiner.

Trial Examiner Batten: We will proceed then.

Mr. Rissman: If the Examiner please, this is a proceeding in Board's Case No. XII-C-57 and Case No. XII-R-85, on a petition and charge filed by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528.

I shall not state the issues involved; that shall become apparent, I hope, from the testimony and from the documentary evidence introduced.

At this time I wish to offer several Board's Exhibits. I offer as—

Mr. Lamfrom: May I interrupt Mr. Rissman, just a 500 moment?

Would it not be better to have these intervening petitions dealt with first?

Trial Examiner Batten: As I understand, he desires to introduce simply the formal exhibits which include the complaint, answer and petition of the people who desire to intervene.

Mr. Lamfrom: I beg your pardon, that is all right.

Mr. Rissman: As BOARD'S EXHIBIT NO. 1, I have—I shall ask to have marked for identification and offer in evidence the order directing an investigation and hearing in Case No. XII-R-85, being the representation case.

As BOARD'S EXHIBIT NO. 2, there is offered for identification and in evidence, a certified copy of an order of the National Labor Relations Board consolidating cases No. XII-R-85 and No. XII-C-57, the order further designating that James C. Batten act as Trial Examiner of these proceedings.

Mr. Lamfrom: What is that date?

Mr. Rissman: The order of the Board is dated August 14, 1935.

Mr. Lamfrom: Thanks.

Mr. Rissman: As BOARD'S EXHIBIT NO. 3 there is offered the original notice of hearing, original petition, original complaint, and original charges and amended charges filed by the Union; the notice of hearing indicating that copies
501 thereof have been received by Lodge No. 1528, the complaining union in this case, and the attorneys for the respondent.

There is also attached affidavit of service indicating that service of the complaint and accompanying exhibits was made upon the Independent Union of Falk Employees.

There is offered as Board's Exhibit No. 4, copy of a letter

ddressed to Leon B. Lamfrom, Esq., attorney for the re-
pondent in this case, extending the time to answer the com-
plaint to August 12, 1937.

There is no objection to the offer of the copy?

Mr. Lamfrom: Not a bit.

Mr. Rissman: As Board's Exhibit No. 6—

Trial Examiner Batten: Is that 6 or 5?

Mr. Rissman: 5.

Trial Examiner Batten: Yes.

Mr. Rissman: 5, there is offered the original answer of he respondent The Falk Corporation filed with the Board on August 12, 1937.

As Board's Exhibit No. 6, there is offered the intervening petition of Independent Union of Falk Employees, filed in fs behalf by its attorneys, Alexander, Burke & Clark.

As Board's Exhibit No. 7, there is offered copy of a letter f the National Labor Relations Board addressed to Alex-nder, Burke & Clark, advising them of the receipt of the intervening petition, granting the request to intervene 02 and suggesting that the request for intervention be renewed before the Trial Examiner.

Is there any objection to the copy being offered? Mr. Clark as the original.

Mr. Engelhard: I haven't any objection.

Mr. Rissman: As Board's Exhibit No. 8 there is offered n intervening petition of the International Union of Oper-ting Engineers Local 311, filed by its attorney, Joseph A. Padway.

Mr. Lamfrom: Has that petition been allowed yet, has the ntervention been allowed?

Mr. Rissman: The Regional Director has advised Mr. Pad-way that his petition is allowed and suggested that the motion e renewed before the Trial Examiner. Under the rules all notions before hearing are made before the Regional Direc-or, who passes upon them, but the Regional Director has assed upon it and also suggested that they be renewed be-ore the Trial Examiner, so that he may pass upon them.

As Board's Exhibit No. 9 I offer copy of a letter of the National Labor Relations Board, or of the Regional Director, Twelfth Region, to the attorney for the International Union f Operating Engineers, acknowledging receipt of his inter-ening petition, stating that the petition and motion are ranted, but suggesting that the petition and motion be re-ewed before the Trial Examiner.

503 May I ask the Examiner to rule upon the exhibits thus far offered? The other exhibits go another phase.

Mr. Lamfrom: While the exhibits of the Respondent are not quite as voluminous in number as the exhibits on the other side, I would like to introduce our preliminary exhibits so that we can get them all together. Will that be permissible?

Mr. Rissman: I think those would follow right in with these.

Trial Examiner Batten: Yes, you may do so.

Mr. Lamfrom: So, therefore, I will offer as The Falk Corporation Exhibit No. 1, an admission of service by the National Labor Relations Board, Twelfth Region, of three copies of the Respondent's answer under date of August 12th, 1937, and as Exhibit No. 2, an affidavit of Selma Werber, who is a stenographer in the office of Lamfrom, Tighe, Engelhard & Peck, attorneys for The Falk Corporation, of service by mail on the Amalgamated Association of Iron, Steel and Tin Workers of North America, and the Independent Union of Falk Employees—by registered mail, I should say, of the answer, copies of the answer.

The receipts of the parties mentioned are attached to the exhibit.

Trial Examiner Batten: If there is no objection they will be received.

504 Mr. Rissman: Those will be called Respondent's Exhibits Nos. 1 and 2?

Mr. Lamfrom: Yes.

(Thereupon the documents above referred to, were marked as RESPONDENT'S EXHIBITS NOS. 1 AND 2, and received in evidence.)

Mr. Rissman: As Board's Exhibit—

Trial Examiner Batten: Are there any remarks which counsel desire to make in behalf of the International Union of Operating Engineers with respect to their petition to intervene?

Mr. Goldberg: May it please the Examiner, we ask to be permitted to intervene, and we also have some charges of unfair labor practices against The Falk Corporation, which we would want to bring before the Board either in this hearing or in another hearing.

Now, in so far as we can have a hearing at this time, I think it would be well to have our charges brought in and

heard at this time, so that we will not have to have a separate hearing.

We also are interested in the bargaining unit. We have been negotiating with the company, and have signed up a number of people, practically every one of the men in the power plant, in the operating engineers, and we want the
505 power plant to be a unit set up where those people employed in the power plant can choose their representatives for collective bargaining purposes.

Trial Examiner Batten: I would like to ask, are those charges of unfair labor practices set forth in your petition here?

Mr. Goldberg: They are not set forth, I haven't pleaded evidence of them.

I have merely set forth that there have been unfair labor practices, interferences in the formation of our union, and I spoke to Mr. Rissman—I did not want to delay the hearing, and he thought that if we set them forth at length that we might have to amend the complaint, whereas he thinks his complaint is sufficiently broad to cover our charges, and for that reason we haven't set them forth at great length.

Now, if the Examiner thinks they ought to be set forth at great length, I am willing to get an amendment to the petition, if you are not of the same mind as Mr. Rissman.

Trial Examiner Batten: I would like to hear from counsel for the respondent as to this particular matter.

Mr. Lamfrom: Well, I was just handed this petition this morning when I came into the room. I really haven't had time to go into it very carefully, but it does not seem to me that it is in proper form, from the standpoint of its informing the respondent—I assume the petition will be al-
506 lowed—of informing the respondent of the facts.

You will notice that paragraph 3 on page 2, states that the petitioner has carried on organization work among the employees of The Falk Corporation, and within the jurisdiction of the petitioning union; that The Falk Corporation heretofore, and at the present time, has violated Section 8, sub-sections 1, 2, 3 and 5 of the National Labor Relations Act in its conduct of and toward its employees concerning the International Union of Operating Engineers, Local 311.

Now, that does not give us very much information as to what we have to meet here, and I take it that if the intervening petition on the part of this proposed intervener here is

allowed that we should be and shall be given an opportunity to answer, so that there will be an issue here.

Trial Examiner Batten: My thought was this, if the Trial Examiner were to direct that the intervening petitioner, the—

Mr. Rissman: International Union of Operating Engineers.

Mr. Lamfrom: Have you a copy of that? If not, I will be glad to hand you this.

Trial Examiner Batten: I have it here, the International Union of Operating Engineers.

Would counsel for the respondent desire a continuance of this hearing for the purpose of answering, or is it your
507 thought that you would want a more specific statement with respect to these charges in order that you may answer?

Mr. Lamfrom: Yes, I think the latter is the position we take. It is impossible for me to intelligently deny this allegation, I don't know what it is all about.

Trial Examiner Batten: Is it the feeling of counsel for the respondent that we would proceed with the case, the Board's respects of the complainant's case and that a reasonable time be given the intervener to specify the charges and serve them on the respondent's counsel, and that you be given a reasonable time to answer.

Mr. Lamfrom: I would say that is just about right.

Trial Examiner Batten: Would that be satisfactory, counsel?

Mr. Goldberg: That is agreeable.

Trial Examiner Batten: The petition of the intervener, or the International Union of Operating Engineers, Local 311, will be permitted to intervene in this proceeding, and they will serve upon the respondent's counsel Tuesday morning at 9:30 o'clock a more specific statement of the charges contained in paragraph 3 of the intervening petition, and the respondent's counsel will have until Wednesday morning at 9:30 o'clock to submit an answer thereto.

Now, I believe there is another petition, is there not, on behalf—

508 Mr. Rissman: Of the Independent Union of Falk Employees.

Trial Examiner Batten: Of the Independent Union of Falk Employees.

Do you desire to make a statement with respect to that, Mr. Clark?

Mr. Clark: Only that this petition has been filed with the

Board and a letter written by Mr. Clark, informing us the petition and motion would be permitted, that is, the right to intervene has been granted with the recommendation that we renew it at the hearing, and we are now renewing it.

Trial Examiner Batten: The motion will be granted.

Mr. Rissman: Are Board's Exhibits Nos. 1 to 9 admitted in evidence?

Trial Examiner Batten: Yes, if there is no objection, Board's Exhibits Nos. 1 to 9, inclusive, will be received in evidence.

(Thereupon the documents above referred to were marked BOARD'S EXHIBITS NOS. 1 to 9, both inclusive, and received in evidence.)

Mr. Rissman: Board's Exhibit No. 10—

Mr. Lamfrom: With the reservation of course that they have such evidenciary effect as normally is attached to those kind of exhibits.

It is not assumed, and of course I am sure the Examiner would not rule, that the verified complaint purports to prove anything.

Trial Examiner Batten: Well, I certainly have no such thought that the complaint proves anything.

Mr. Lamfrom: I thought counsel on the other side might.

Trial Examiner Batten: My understanding is that those exhibits are the formal exhibits necessary to be filed, showing the complaint, answer, petitions and formalities in connection with the hearing.

Mr. Lamson: They really make the record.

Trial Examiner Batten: That is right.

Mr. Rissman: As BOARD'S EXHIBIT NO. 10 I offer table No. 8 of the United States Department of Labor, Bureau of Labor Statistics, pamphlets entitled "Review of Strikes in 1936", this table setting out "Major Issues Involved in Strikes ending in 1936", the relevancy of it in this hearing being that it indicates that of all major issues of strikes in that year, there were 2,166 strikes, of which 1,083 were due to union organizing, recognition of unions, closed shops and discrimination, or 50.2 per cent of the total.

The exhibit shows, or goes to prove and substantiate the findings of Congress that the denial by employers to employees of their right of self-organization, and right of bargaining collectively does lead to labor disputes.

Mr. Lamfrom: The respondent will object to this exhibit,

the reception of it, on the ground that it is incompetent,
510 irrelevant and immaterial, and for the further reason, that the findings of Congress which are set forth in this legislation do not need any extraneous proof; they must be taken here for granted.

Furthermore, this is not relevant to the issue here. The issue here is, whether The Falk Corporation has been guilty of certain alleged unfair labor practices under the law as it exists, regardless of the background which Congress has itself set forth in the Act.

Mr. Rissman: The Exhibit—the document being an official publication of a department of the government needs no further proof of its authenticity than that statement, and is offered not for the issues involved in this case specifically, but to generally substantiate the findings of Congress. A court may not feel as Mr. Lamfrom does as to the effect the findings in the Act have.

Mr. Lamfrom: I don't care to extend this argument.

(Argument outside the record as directed.)

Trial Examiner Batten: It will be received for whatever value it has.

I don't believe the atmosphere will have any particular effect upon the Trial Examiner.

Mr. Lamfrom: I did not mean that, but the atmosphere of the case.

Trial Examiner Batten: Yes, I understand.

511 (Thereupon the document above referred to was marked BOARD'S EXHIBIT NO. 10, and was received in evidence.)

Mr. Rissman: As Board's Exhibit No. 11—

Mr. Lamfrom: By the way, Mr. Rissman, if I may interrupt, will you give me a copy of the statistical evidenciary matter?

Mr. Rissman: I will send you one from the office.

Mr. Lamfrom: Thank you.

Mr. Rissman: As BOARD'S EXHIBIT NO. 11, there is offered table 1, prepared by the Division of Economic Research of the National Labor Relations Board; the source of the information is the United States Department of Commerce, Bureau of Census.

Under the Bureau of Census, the industry in which The Falk Corporation is engaged is catalogued and classified "Foundry and machine products industry".

Table 1 indicates the rank of this industry in the United

States, the number of wage earners, the value of products set out first by the placing of the industry, of course, in each of those categories, and secondly, by the number of employees and the value in dollars and cents of the products.

The exhibit indicates that the industry ranks fourth in number of wage earners in the United States, and ninth
512 in the value of products, and that the machinery industry employes 216,439 people and was responsible for $788,195,000 of their production in the year 1936.

This is Exhibit 11.

Mr. Lamfrom: That is objected to also, if the Examiner please, on the ground that it is incompetent, irrelevant and immaterial, and for the further reason that we have a stipulation with the National Labor Relations Board, a statement or a very complete statement of facts covering The Falk Corporation, its activities, its products, its interstate commerce status, the number of its employees, and all of those things, so that it seems to me that it would be of course entirely irrelevant as to what basis this industry comparatively occupies in the industries of the country. We are not concerned with that here.

I would always reiterate that all we are concerned with here is the charge of the gentlemen on the other side that The Falk Corporation indulged in unfair labor practices.

Mr. Rissman: If the Examiner please, the stipulation of which Mr. Lamfrom speaks—

(Argument ensued outside the record, as directed.)

Trial Examiner Batten: Of course, I don't assume we are going to accept evidence in this case on the basis that it is admissible if it does not do any harm to the respondent,
513 but in the Jones & Laughlin cases and other cases which have been passed upon by the Supreme Court and in which they have written opinions, reference has been made to facts and evidence of this type to show the importance of a particular corporation in the industry as a whole, and it will be received for whatever relevancy it may have.

Mr. Lamfrom: I do not, if your Honor please, desire to be technical, but I do desire to protect this record as we go along which it is my duty to do.

Trial Examiner Batten: You are fully entitled to do whatever you think is necessary in your capacity as an attorney.

(Thereupon the document above referred to, was marked as BOARD'S EXHIBIT NO. 11, and received in evidence.)

Mr. Rissman: As Board's Exhibit No. 12 there is intro-

duced Table No. 2 of the Division of Economic Research, National Labor Relations Board; the source is the United States Department of Commerce, Bureau of Census, and the exhibit indicates that the machinery industry in the state of Wisconsin ranks first in the number of wage earners, and fifth in the value of products; that in the machinery industry the value of the products for the time indicated was $37,086,063.

I offer this in evidence as BOARD'S EXHIBIT NO. 12, Mr. Examiner.

514 Mr. Lamfrom: The respondent will object to the admission of that exhibit and assigns the same reasons as the objection to the other.

Trial Examiner Batten: It will be received, and I presume this is a good time to announce that it will not be necessary for counsel to take exceptions to the rulings. The record will show that exception is granted with respect to all adverse rulings.

Mr. Lamfrom: I understood that to be the practice.

(The document above referred to, was marked as BOARD'S EXHIBIT NO. 12, and received in evidence.)

Mr. Rissman: As Board's Exhibit No. 13—

Trial Examiner Batten: 14, isn't it?

Mr. Rissman: 13.

Trial Examiner Batten: 13?

Mr. Rissman: Yes, sir. (Continuing) —there is offered Table No. 3 of the Division of Economic Research, National Labor Relations Board, the same source as the previous exhibit, indicating that among the states manufacturing machinery Wisconsin ranks seventh in the number of wage earners and ninth in the value of products, and indicates that in the comparison the value of products manufactured was $37,086,000.

Mr. Lamfrom: The receipt in evidence of that exhibit is objected to for the same reasons that were stated in re-
515 spect to the previous exhibits.

Trial Examiner Batten: The same ruling, it will be received.

(Thereupon the document above referred to was marked as BOARD'S EXHIBIT NO. 13, and received in evidence.)

Mr. Rissman: As Board's Exhibit No. 14, there is offered Table No. 4, Division of Economic Research, National Labor Relations Board—

Mr. Lamfrom: What is this?

Mr. Rissman: Exhibit 14.

Mr. Lamfrom: Of the Labor Board, Economic Research of the Labor Board itself?

Mr. Rissman: And the source of information is the United States Department of Commerce, Bureau of Census, the exhibit indicating the sources of raw materials used in the machinery industry, indicating that 75.3 per cent of the steel plant raw material used comes from four states in the United States, those states being Illinois, Indiana, Ohio and Pennsylvania, and that the state of Wisconsin is responsible for less than one-tenth of one per cent of the production of steel, indicating that in the operations of its business the respondent is dependent for its raw materials on these other states.

Mr. Lamfrom: That is objected to for the same rea-
516 sons, and for the further reason that it is a compilation of the Labor Board itself. The last objection, it seems to me, that we are not being treated in accordance with the due process of law in this hearing, in which the Labor Board acts as hearer of facts and introduces its own compilation as evidence.

And for the further reason that all matters connected with the particular status of the flow of raw material as far as The Falk Corporation is concerned, is amply covered, as the Examiner will see, by the stipulation, and that it is simply, outside of the legal objection I have given, further unnecessarily encumbering this record.

Mr. Rissman: The compilation is made not by the Board but the United States Department of Commerce, Bureau of Census, that regularly engages in compiling such figures and statistics.

Trial Examiner Batten: The exhibit will be received in evidence.

(Thereupon the document above referred to was marked as BOARD'S EXHIBIT 14, and received in evidence.)

Mr. Rissman: As Board's Exhibit 15, there is offered a certified copy, certified to by Conway P. Coe, Commissioner of Patents, United States Patent Office, United States Department of Commerce, of the declaration and printed specification of the trade mark registered to the respondent,
517 The Falk Corporation, indicating to make use of the name "Falk" on the products manufactured by the corporation, together with affidavit of Harold S. Falk, vice president of the corporation, acknowledging that the trade mark

is used by the applicant-respondent in commerce among the several states of the United States and foreign nations.

Mr. Lamfrom: That is objected to, if your Honor please, for the same reasons, and for the further and other reason that the matter of interstate commerce is fully covered by the stipulation, and to pile up additional proof of that here is merely an accumulation of evidence which is entirely unnecessary.

Trial Examiner Batten: Of course the Trial Examiner not having seen the stipulation—

Mr. Lamfrom: I referred to it three or four times.

Trial Examiner Batten: It is quite impossible for the Trial Examiner to pass on these exhibits in the light of something which he has not seen nor heard the details of.

Mr. Rissman: I will make this offer—

Trial Examiner Batten: I believe at this point I will reserve my ruling on Exhibit 15.

Mr. Rissman: 15.

Trial Examiner Batten: On 15, until the exhibit,—the stipulation covering interstate commerce has been introduced.

Is that the next exhibit?

518 Mr. Rissman: Yes, sir.

Mr. Lamfrom: I am not responsible for the order of these exhibits.

(Thereupon argument ensued outside the record, as directed.)

Trial Examiner Batten: Will you introduce the stipulation?

Mr. Rissman: I now offer the stipulation entered into between The Falk Corporation, by its attorney, and the National Labor Relations Board, by its Regional Attorney, stipulating to a number of facts, figures and statements indicating that the respondent's business is dependent upon the sources of material outside the state of Wisconsin and depending for the sale and distribution of its materials to points outside the State.

The exhibit contains among other things a list of 50 cities in the United States where the respondent maintains district offices and representatives; a list of 6 cities in Canada where they maintain district offices and representatives, and indicates there are offices and representatives in two cities in Mexico, in the Philippine Islands, Hawaii, Cuba and South Africa.

I now offer BOARD'S EXHIBIT 16 in evidence.

Trial Examiner Batten: If there is no objection the exhibit will be received.

519 (Thereupon the document above referred to was marked as BOARD'S EXHIBIT NO. 16, and received in evidence.)

Trial Examiner Batten: Exhibit No. 15 will also be received.

(Thereupon the document above referred to was marked as BOARD'S EXHIBIT NO. 15, and received in evidence.)

Trial Examiner Batten: I wonder if I might ask again if anyone has an extra copy of the complaint.

Mr. Rissman: Yes, I have one.

Trial Examiner Batten: I would like to have an extra copy of the complaint.

Mr. Lamfrom: We will have one made for you.

Trial Examiner Batten: I think Mr. Rissman has one.

Does counsel for the interveners have an extra copy of the intervening petition, please, that I may have?

If you wish to remove your coats, gentlemen, feel free to do so.

Mr. Clark: I assume your Honor has no objection to my sitting here.

Trial Examiner Batten: No objection.

I assume it might be well if we determine the hours during this long proceeding.

Is there any objection to having these sessions from
520 9:30 to 12:30, and from 2 to 5?

Mr. Lamfrom: None on our part.

Trial Examiner Batten: The hours of the hearing will be from 9:30 to 12:30, and from 2:00 to 5:00.

Mr. Rissman: Mr. Falk, will you take the stand please.

HAROLD S. FALK, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name please?

A. Harold S. Falk.

Mr. Lamfrom. This contraption here—

(Discussion followed off the record, as directed.)

Q. (By Mr. Rissman.) What is your business, Mr. Falk?
A. Manufacturer.
Q. What is your office in the Falk Manufacturing Corporation?
A. Vice president and Works Manager.
Q. How long have you been vice president and Works Manager, Mr. Falk?
A. I think since about 1921 or somewhere thereabouts.
Q. Were you affiliated and connected with the company prior to that time?
521 A. Yes.
Q. In what capacity?
A. Various capacities.
Q. What office did you hold immediately prior to your office of vice president?
A. General superintendent.
Q. And for how long were you general superintendent?
A. Oh, I don't know, it was a matter of eight or ten years perhaps.
Q. How long have you been affiliated with the Falk Corporation?
A. Well,—
Q. (Continuing.) Altogether, in any capacity?
A. I put in my first summer there in the summer of 1900 while I was still going to high school.
Q. Are you familiar with the stipulation that has been filed here and offered in evidence as Board's Exhibit No. 16, Mr. Falk?
A. Is that the one that was in answer to the questions that Mr. Lippman—
Q. That is right, indicating the nature of the business, products, and methods of manufacture.
A. Yes, sir.
Q. Those are substantially the methods under which the plant is operated.
522 A. Yes, sir.
Q. Your office is in the city of Milwaukee?
A. Yes, sir.
Q. Since you have been vice president and Works Manager for The Falk Corporation, has it been under your duties to handle all labor relations and labor matters that arise in the factory?
A. They are usually referred to me.
Q. Well, do you always handle those matters? I don't

mean small matters that a foreman might handle, such as supervising employees, but matters of policy and matters that affect the entire plant rather than any particular small division of the plant or group of employees.

A. Yes, that comes under my jurisdiction.

Q. Prior to 1933, prior to the enactment of the National Industrial Recovery Act, was there any form of representation among your employees?

A. We had a Works Council, but I do not recall the date of its organization.

Q. The Works Council was the one that was created in July or August, 1933?

A. Thereabouts, I am not just sure about that.

Q. After the N.I.R.A.

A. I am not sure about that.

Q. About four years ago?

523 A. I say I am not sure about the date.

Q. Before the Works Council, was there any form of employee representation in your plant?

A. No.

Q. Were there ever any requests made by any labor organizations or groups of employees for such representation?

Mr. Lamfrom: When?

The Witness: No.

Q. (By Mr. Rissman). At any time prior to the Works Council. At any time prior to 1933, was there ever any stoppage of work in your plant due to labor disturbances or labor difficulties?

A. Prior to 1933 you said?

Q. Yes.

A. The only one I recall was in 1906.

Q. You are referring now to General Molders strike?

A. Yes.

Q. In Milwaukee at that time?

A. Yes.

Q. How did that affect the production in your plant?

A. Well, it was reduced for a time but we operated shortly after that and gradually got our production back. I cannot tell you just how—

Q. Between the period 1906 to 1933, there were no labor disputes and labor disturbances at all in your plant?

524 A. No.

Q. Following the 1906 strike of the moulders union, and up to 1933, the time the Works Council was created, were

you ever requested by any labor organization or group of your employees to bargain with them collectively?

A. No.

Q. Were there ever any grievances or any demands presented to you by any labor organizer, labor union or group of employees acting collectively prior to the Works Council?

A. That is a rather involved question, isn't it?

Q. Well, I will break it down.

A. If three people came and asked me a question, I might say yes, but if you ask me definitely whether there was a labor organization, I would have to answer No.

Q. Well, did any group of employees come to you as a committee representing workers in your plant?

A. No.

Q. Do you know and can you tell us if any of the labor organizations in Milwaukee, the Machinists' Union, Moulder's Union, Blacksmiths' Union, or any other labor organization in this city ever attempted to organize your employees?

A. I don't know.

Q. Do you know if there were ever any leaflets or cards distributed around your plant inviting the men to join a labor organization?

525 Mr. Lamfrom: Now, when?

Q. (By Mr. Rissman) Prior to 1933.

A. I don't know.

Q. Did you ever see any such leaflets or cards?

A. I don't recall having seen them.

Q. What brought about the inauguration of the Works Council?

A. I presume the N.R.A. probably did.

Q. The enactment of Section 7(a) of the N.R.A.?

A. I imagine so.

Q. What was the specific action of The Falk Corporation that brought about the establishment of the Works Council?

A. I don't remember that.

Q. Did you as vice president and Works Manager participate in the organization of the Works Council?

A. In what way?

Q. In any way.

A. I think I once suggested that they organize such an organization.

Q. To whom did you suggest it, and in what manner did that suggestion take place?

A. I think to a group of our employees in the plant.

Q. Is that the—you refer now, Mr. Falk, to the occasion when you spoke to a group in the machineshop at the 16 foot boring mill?

A. That is what I am thinking about, yes.

526 Q. About how many employees were assembled there, approximately?

A. Well, if I were to guess I would say about three hundred.

Q. Do you recall what you said to them at that time?

A. No, I do not.

Q. The exact language is not necessary.

A. I mean I don't recall the substance of it.

Q. Let me refresh your memory.

Didn't you at that time recommend to the employees that in view of the law they should have some type of representation plan and that the best and most effective method of organization for them would be one where they could choose their own representatives in the shop

A. Substantially that I think is right.

Q. And you advised them it would be inadvisable for them to choose the outside labor organizer, referring particularly at that time to the organizer of the Metal Trades Division of the Milwaukee Federated Trades Council?

A. I think that was substantially correct.

Q. Do you recall at that time you told them if they would elect or vote for these outside labor representatives the company would not deal with them and it would rather throw away the key to the plant than to deal with the labor organizers?

527 A. No.

Q. What did you say?

A. I think I told them we would not run a closed shop.

Q. Did you tell them anything further?

A. I don't think so.

Mr. Lamfrom: When was this, Mr. Rissman?

Mr. Rissman: This was in July or August 1933, after the enactment of the N. I. R. A.?

The Witness: I don't remember.

Q. (By Mr. Rissman) Well, the N. I. R. A. was enacted in June 1933?

A. I have no way of remembering that date.

Q. Was there—after that announcement of course the Works Council was created?

A. As I recall, yes.

Q. Did you make any other announcement or speech to the employees in the plant in that respect at that time?

A. Not that I recall.

Q. Who, if you know, prepared the by-laws and constitution of the Works Council?

A. I don't know.

Q. Were you ever consulted with reference to the drafting of the by-laws?

A. It was discussed in meetings at various times, although I had very little to do with it.

528 Q. Meeting with whom, Mr. Falk?

A. With the men on the Council.

Q. Meetings at which you were present?

A. Sometimes I was present, and sometimes I was not.

Q. What assistance, if any, did you or the company give to the formation of the constitution and by-laws of the Works Council?

A. What assistance?

Q. Yes.

A. Very little as I recall; I don't recall having had anything to do with it particularly.

Q. How were the representatives of the Works Council chosen?

A. By ballot.

Mr. Lamfrom: Now, I submit we can probably shorten that a good deal, Mr. Rissman, although its relevancy I do not see, by introducing a copy of the Works Council by-laws and constitution, and then you will have the whole thing.

Mr. Rissman: I don't think think the constitution and by-laws are material.

I thank Mr. Lamfrom for his suggestion.

Mr. Lamfrom: Well, they are the best evidence; there is a copy here if you gentlemen want it.

Mr. Rissman: I am not asking about the constitution and by-laws; I am asking how they were created. The con-

529 stitution and by-laws certainly do not indicate that.

Mr. Engelhard: The constitution and by-laws indicate how the Works Council—

Trial Examiner Batten: You may proceed, Mr. Rissman.

Q. (By Mr. Rissman) How were the management representatives chosen?

A. I don't remember that.

Q. Who chose them?

A. I don't know.

Q. How?

A. I don't know.

Q. Weren't they appointed by you, Mr. Falk?

A. They may have been.

Q. Did you attend any meetings of the Works Council after it was created?

A. Whenever I was invited to attend, yes.

Q. In what capacity did you attend them?

A. As management representative.

Q. Who were the other management representatives in the beginning?

A. I think Mr. Green was one.

Q. Who is Mr. Green?

A. Superintendent of our machine shop.

I think Mr. Henderson was another. Mr. Henderson is superintendent in the Erecting Shop. I believe Mr. Holub was one.

530 Q. Is Mr. Holub still employed by the company?

A. Yes, he is the man in charge of mechanical maintenance.

Q. How long has Mr. Holub been employed by the company?

A. Oh, over 30 years.

Q. Was Mr. Hyder a management representative?

A. No, as I recall, Mr. Hydar was simply in there as secretary.

Q. The secretary had no vote?

Trial Examiner Batten: That is, he was secretary of the Works Council or secretary of Management?

The Witness: He simply acted as secretary.

Q. (By Mr. Rissman) He was personnel manager of the plant?

A. Yes, sir.

Q. And secretary of the Works Council.

A. Yes.

Q. Can you tell us, Mr. Falk, the method employed by the Works Council, and participated in by the company in taking up matters of interest to the employees, the so-called matters of collective bargaining?

A. Well, I think their general procedure was to have a meeting of the shop representatives without any management representatives the day before they had their regular meeting.

Q. Wasn't that employed later on? Originally, was it

not, that there was a meeting of all representatives of
531 employees and management, and then later at the request of the employees they were granted a separate meeting.

A. That is right.

Q. Go ahead.

A. Well, that is about all there is to it, isn't it?

Q. Well, you haven't completed it. You have told us how they held their meetings.

How were matters taken up with Management, the matters presented at these joint meetings of employee and management representatives?

A. Well, they were—well, when they decided in their meeting on the things that they wanted to discuss, they brought them up and they were discussed in the meeting and presented to management, and then management made its answer.

Q. In what form were they presented to management?

A. Usually verbally as I recall it.

Q. Let's assume that at a meeting of the Works Council a request is made and discussion had upon the advisability of certain piece work rates; that matter is discussed at the meeting of employee and management representatives, and it is then presented to the management by whom?

A. By the representatives on the Council.

Q. When you say "to the management" that ordinarily meant you as vice president and Works Manager?

A. It came to me for final decision, yes, sir, when it
532 was something the management representatives in the Council won't take responsibility for.

Q. We will assume now in this question that these matters are of the type that had to be referred to you.

Then what was the next step taken by management in the consideration of the proposal advanced by the representatives?

A. Well, it was discussed.

Q. With whom?

A. Well, sometimes I would discuss it with Mr. Herman Falk, and sometimes I would discuss it with various superintendents in the different departments.

Q. There was a general discussion with the management or company officials?

A. Yes, sir.

Q. Or supervisors.
A. Yes, sir.
Q. And you would indicate your decision and then submit it to the Works Council?
A. That is right.
Q. How long was the Works Council in operation in the plant from the time of its organization in 1933?
A. Something over three years I guess.
Q. Until April 8th, 1937.
A. I don't know.
Q. Is that correct?
533 A. I don't know.
Q. Well, wasn't the last—what was the last time that you had anything to do with the Works Council as a Works Council?
A. I don't know, I think the records will show it; I don't remember what date.
Q. My records don't show when you last had anything to do with it. When was the last time you had anything to—when was the last time you had to make any decision to be presented to the Works Council, do you recall?
A. I can't recall the date.
Q. When was the last time you had any meeting with the Works Council, or any of its representatives as such?
A. I can't recall the date.
Q. Can you recall, Mr. Falk, if there were any outstanding matters taken up by the Works Council with management directly affecting the employees?
A. I think there were probably a good many of them.
Q. Do you recall of any that were of major significance, either hours, wages, type of work, method of workmanship, or anything?
A. Well, I know those things were discussed, but I certainly haven't got a very clear idea of when or how or what they were.
Q. You state that nothing stands out in your mind of
534 primary significance as an accomplishment of the Works Council in its dealings with management?
A. Well I think there were some, but I don't recall them now.
Q. Do you recall, Mr. Falk, any result of activity between the Works Council and the company that would not have resulted in the absence of the Works Council?

Mr. Lamfrom: I object to that, if your Honor please, as leading, and calling for a conclusion. I don't think any man can answer that question.

Trial Examiner Batten: Well, he may answer it if he can.

Mr. Lamfrom: If he can.

The Witness: I don't understand the question.

Trial Examiner Batten: Read the question please.

(The question was read.)

The Witness: I don't think I can answer it.

Q. (By Mr. Rissman). Let me ask you this: Did the Works Council do anything for the employees that the company itself would not have done?

A. The company did it ultimately; if it was done at all the company would do it, wouldn't it?

Q. The Works Council did nothing but draw the company's attention to something?

A. I would not say that. The Works Council made
535 their requests and if there was any way we could accede to those requests we did it.

Trial Examiner Batten: Will the reporter read the previous question?

(The record was read.)

Q. (By Trial Examiner Batten) In other words, if the same grievances had come to your attention prior to the time you had the Works Council, would the employees receive the same consideration and treatment that they received as a result of the Works Council?

A. I think so, yes sir.

Q. (By Mr. Rissman) So that for the three years or four years, whatever it was, that the Works Council existed at your plant ostensibly representing employees, it accomplished nothing that the company itself would not have been willing to do without the Works Council?

A. Except that I think there were a good many things that came up through the Works Council that might not have come up had they not had such an organization.

Q. Did the company—and by the company, I mean necessarily its officials—feel that the Works Council was an effective and appropriate method of representing employees?

A. Yes.

Q. Did the company and its officials feel, and do they now feel, that the Works Council was the best type of em-
556 ployee representation for employees in a plant like The Falk Corporation?

A. I think I would answer that question, Yes.

Q. How often were company representatives or employees elected to the Works Council?

A. I don't know.

Q. Do you know if there were any employees in your plant, any group of employees or any particular department employees in your plant, who were not represented on the Works Council?

A. No, I do not.

Q. Well, do you know if the office employees and draftsmen were represented?

A. I do not think they were.

Q. The Works Council was limited to shop employees rather than office employees?

A. I don't know whether they were limited, but I do not think the draftsmen had representatives as far as I remember.

Q. As far as you remember, did the office have representatives?

A. No.

Q. Did the power house have representatives?

A. Yes, sir.

Q. And outside yard workers?

A. Yes, sir.

Q. Mr. Falk, you have testified that in your opinion 537 and in the opinion of the company, the Works Council provided the most effective vehicle of collective bargaining for the employees in a corporation like yours.

Can you tell us why you feel that way and why you think that is so?

A. Because we dealt directly with our own people.

Q. What other advantages, if any?

A. I don't know.

Q. Do you feel that your employees can be represented more effectively by a labor organization particularly designed for that purpose and whose main interest is to represent the employees?

A. No.

Q. Rather than by the Works Council.

A. No, I do not.

Q. Why not?

A. Well, I think our own people know more about the conditions under which they are working than some outside labor organizer does.

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Q. Do you think that your own people as members of an outside labor organization like the union in this case could more effectively represent the employees in the shop or do you think they could do a better job in an organization like the Works Council?

A. The latter.

538 Q. What distinction is there, assuming that in both cases your own employees were representatives?

A. Because they are not under the influence of an outside source.

Q. But they are under the influence of the company?

A. I would not say that.

Q. Under what influences are they in the Works Council?

A. Pardon?

Q. Under the Works Council plan.

A. They are certainly not under the influence of the company.

Q. Are they under any influences?

A. None that I know of.

Q. In what way in your mind could outside influences be harmful?

A. Because I don't think these outside organizers know what are the conditions under which our men work or how we have treated our men.

Q. Are there any other reasons?

A. I don't think of any just now.

Q. Assuming that an outside organizer is the representative of a labor union about whose integrity there is no question, could be advised of the situation in your plant by your employees, could he or could he not more effectively bargain for them in dealing with the company?

539 A. I don't think so.

Q. Then the Works Council.

A. I don't think so.

Q. Is it not true, Mr. Falk, that one of the main reasons and—strike that.

It is not true, Mr. Falk, that one of the main reasons an employer—to be specific, the Falk Corporation, objects to an outside union is the fear, unfounded perhaps, of the employer that the outside union leads to a closed shop?

A. I think that is probably true, yes.

Q. How?

A. I think that is probably true, yes.

540 Q. If the employer could be guaranteed that the outside union would not lead to a closed shop do you think you would still object to it?

A. Yes, sir.

Q. When I say "employer" I refer to the Falk Corporation.

A. I do.

Q. If that one fear, so-called, was removed what objection will there be to the outside union?

A. What fear are you talking about now?

Q. The fear of a closed shop.

A. I would still have the same objection I had before.

Q. What has been, and what is now the policy of The Falk Corporation with reference to dealing with outside labor organizations?

Mr. Englehard: Now, I submit, your Honor, that is rather a double-barreled question, what has been and what is now. Will you break that up?

Mr. Rissman: If there has been any change the witness may indicate.

The Witness: I think our labor policy is pretty clearly defined in a statement that we posted on some date in April, in which we quoted the president of the United States in a statement that he made, as I recall, in 1934, as to the attitude of the automobile industry, and if that may be

541 submitted in answer to your question I would say that that was our labor policy.

That was about the only thing we have ever posted in writing.

Q. (By Mr. Rissman) Does that statement as posted indicate the ~~policy of~~ the company at the present time with reference to outside labor organizations?

A. Yes.

Q. What was your answer?

A. Yes.

Q. What was the date of that statement?

A. I don't remember the date; it was sometime in April as I recall.

Q. 1937?

A. Yes, sir.

Q. After the decision of the United States Supreme Court upholding the validity of the National Labor Relations Act?

A. Well, I don't know the date of the Labor Relations Act, nor do I happen to know the date of this particular announcement, so that I can answer that.

Mr. Rissman: Well, Mr. Lamform is look for it.

Q. (By Mr. Rissman) Is that policy, Mr. Falk, different in any respect from the policy previously posted by the company up to that time?

A. I think it is, yes.

542 Q. I hand you herewith Board's Exhibit No. 17—

Mr. Lamform: Let the record show that you received that from my hands, Mr. Rissman.

Mr. Rissman: I certainly will.

Q. (By Mr. Rissman) I hand you Board's Exhibit No. 17 for identification and ask you if that is the statement of policy you referred to a few moments ago?

A. Yes, sir, that is it.

Q. And that is a statement of policy dated April 21st, 1937 addressed to all employees, reciting to them the position of the President of the United States of May 25th, 1934.

Can you tell us, Mr. Falk, why the position of 1934 was chosen rather than the position of the government of 1937 as announced by the Supreme Court in the case upholding the validity of this Act?

Mr. Englehard: Now, before you answer that question, Mr. Falk, I object to the form of the question because it assumes that there is a different position taken by the government from that which is disclosed in the quotation taken from the President's speech of 1934.

Trial Examiner Batten: Will the reporter read the question.

(The question was read.)

Mr. Engelhard: If the Examiner please, the difficulty is, that there is implied in this question that there is a
543 difference between the President's announcement in 1934 and the government's position because of the Supreme Court's decision of April 12th; it is implied that there is a difference.

I don't think it is a fair question to put to a man who is not versed in law.

Trial Examiner Batten: I don't think there is anything implied in the question that the government's position might or might not be different after the Act was passed than it was at that time.

I think it is a fair question to ask Mr. Falk why he chose the statement of the President dated May 25th, 1934 rather than a reference to the President's attitude subsequent to the upholding of the National Labor Relations Act which was in April 1937.

Mr. Engelhard: Well, that assumes that the President's position is different.

Trial Examiner Batten: No, not necessarily.

Mr. Rissman: May I have a ruling on the objection?

Trial Examiner Batten: Read the question again, please.

(The question was re-read.)

Trial Examiner Batten: You may answer.

The Witness: Well, it seemed that to express the sentiment, including that in the state of policy, I had intended to show that we were abiding by the law. That was the pur-
544 pose of it, and the statement appears to express it rather definitely.

Q. (By Mr. Rissman) Did you make any inquiry, Mr. Falk, to determine whether the President's statement of May 25th, 1934 was in accord with the law as announced by the Supreme Court in April, 1937?

A. No, I did not.

Q. You did not?

A. No.

Q. Then how did you know that statement was the law?

A. I didn't say I knew it was the law. I said it seemed, that was the impression we got by the law.

Trial Examiner Batten: I believe Mr. Falk's answer was, it seemed to him it conveyed the idea of the law.

Mr. Rissman: He also stated he had not made inquiry as to whether or not it was the law.

Mr. Englehard: Who could explain the law better than the President of the United States.

Q. (By Trial Examiner Batten) Mr. Falk, did this statement of the President of May 25th, 1934 have any reference at all to the National Labor Relations Act?

A. Not that I recall, now.

Trial Examiner Batten: I believe we will recess, gentlemen for ten minutes.

(A short recess was taken.)

545 Trial Examiner Batten: All right, we will proceed, gentlemen.

Mr. Risman: May I have the last question and answer read.

(The record was read.)

Q. (By Mr. Rissman) You say that was the first time the company posted a statement of policy?

A. Yes, I think, I did.

Q. And what prompted the posting of the statement of policy at that time?

A. Just to let the men know what our attitude was. It had never been published before or put up in printed form.

Q. Had the company's attitude ever been announced before?

A. No, not publicly.

Q. Had the company ever written any letters to employees indicating what its attitude was in this connection?

A. Just what are you getting at now? I don't just exactly understand what you are referring to.

Trial Examiner Battern: Read the question, please.

(The question was read.)

The Witness: Not to all employees.

Q. (By Mr. Rissman) To which employees?

A. To the 15 men in the powerhouse.

Q. When did you do that?

A. I don't recall the date of that, somewhere in April.

546 Q. 1937?

A. Yes.

Q. Why was it necessary to write to the employees in the powerhouse stating your position?

A. Because the union had sent out some postal cards which I believed carried a misstatement.

Q. Which union?

A. The A. F. of L., unit of Operating Engineers.

Q. You are referring to Local 311?

A. Yes.

Q. Of the International Union?

A. Yes.

Q. I hand you herewith Board's Exhibit No. 18 for identification.

Mr. Lamfrom: I would like to refresh the witness' memory. This is a communication which originally called for this letter, just so you have that before you, Mr. Falk, when you testify.

Q. (By Mr. Rissman) Mr. Lamfrom has handed to you that postal card you referred to?

A. Yes, sir.

Q. Together with the letter written by the company?

A. Yes.

Q. I hand you Board's Exhibit No. 17 for identification, and ask you if that is the letter you referred to?

547 Mr. Lippman: Exhibit 18.

Mr. Rissman: Exhibit 18.

Mr. Lamfrom: Exhibt 17 is the April 21st statement.

The Witness: Yes, that is it.

Q. (By Mr. Rissman) This is the letter addressed to the employees in the powerhouse dated April 16th, 1937, signed by the Falk Corporation indicating it was written by Harold S. Falk.

A. That is right.

Q. What was there in the postal card other than your impression, that made necessary the statement to the employees, "I wish to make our position perfectly clear to you:

"1. We are not in favor of a union."

A. This gentleman indicated in the postal card that he had an interview with me, and he says, "Only the hours that you men wish to work remain to be settled."

That I say is entirely a false statement.

Q. Did you have an interview with Mr. Kingsland?

A. I did.

Q. Mr. Kingsland is representative of Local 311, is that right?

A. He told me that, yes, sir.

Q. What were the matters agreed upon between you and Mr. Kingsland?

A. We agreed upon nothing.

548 Q. What were the matters conferred about or discussed, Mr. Falk?

A. He asked me whether I would recognize him as bargaining agent for the powerhouse employees.

Q. And what did you say?

A. I told him that before making any arrangement like that I would want to know how the men in the powerhouse felt about it.

Q. What did you have in mind?

A. Just exactly that, how the men felt about it, whether or not they wanted this unit to be their representative.

Q. You mean this union?

A. This union.

Q. Did you suggest to Mr. Kingsland that a vote could be taken among the powerhouse employees so that they could indicate their choice?

A. Not to Mr. Kingsland, not that day, not the first meeting.

Q. What was said between you and Mr. Kingsland further on that subject?

A. Very little else, except when I asked him how many men he had, he said he had 19—had 17 out of 19, and we happened to have 15 in the powerhouse. I asked him to show me a list of who they were, and he said he had forgotten.

I said, "Well, suppose you check up your list and we
549 will have a meeting some time later," which we did in Mr. Lamfrom's office.

Q. Did you send out this letter between the date of your first visit with Mr. Kingsland and the second visit with him?

A. Between those two?

Q. Yes.

A. Yes, because t' s postal card was received in between those dates.

Trial Examiner Batten: May I see the postal card?

The Witness: Yes, sir.

Q. (By Mr. Rissman) I repeat again, Mr. Falk, what is there on the postal card that made it necessary for you to say in this letter to the employees in the powerhouse, "We are not in favor of a union?"

Trial Examiner Batten: Might I ask, do you have any objection to the introduction of this postal card?

Mr. Lamfrom: No, sir, I was going to suggest it, Mr. Examiner.

Trial Examiner Batten: At this time, so that we have both of those matters in the record—

Mr. Goldberg: Let's see the postal card.

Mr. Lamfrom: I will guarantee it.

Trial Examiner Batten: Let me see it.

Mr. Goldberg: Yes, I will know it if I look at it.
550 Yes, that is the postal card.

Mr. Lamfrom: I suggest the postal card be attached to the letter.

Mr. Rissman: I will offer this as Exhibit No. 18, if the Examiner please.

Trial Examiner Batten: That will be 19.

Mr. Rissman: As Exhibit 19.

Mr. Lamfrom: And let it appear that is the postal card received by The Falk Corporation.

The Witness: Received by the man.

Mr. Lamfrom: By the man.

The Witness: That brought it to me.

Mr. Lamfrom: Correct, which preceded the sending of the letter which is Exhibit 17.

Trial Examiner Baten: 18.

Mr. Lamfrom: 18.

(Whereupon, the documents above referred to, marked respectively BOARD'S EXHIBITS NOS. 17, 18 AND 19, were received in evidence.)

Q. (By Mr. Rissman) To whom is that postal card addressed, Mr. Falk?

A. To Mike Trebetosky.

Q. Who is Mike Trebetosky?

A. He is an engineer on one of our steam derricks.

Q. Is he an employee in a supervisory capacity?

551 A. No.

Q. He is not?

A. No.

Q. Is he an employee at the powerhouse?

A. No.

Q. He is an engineer though, an operating engineer?

A. He is operating engineer on a steam derrick.

Q. How did you happen to get this postal card?

A. He brought it to me.

Q. Did you request it?

A. No, sir.

Q. Why did he bring it to you?

A. I don't know; he said he read it and asked me how about it.

Q. What did you say?

A. I told him substantially what I wrote in this letter, and I had several others brought to me besides.

Q. How many did you have brought to you altogether?

Q. (By Mr. Lamfrom) You mean, Mr. Falk, you had several postal cards brought to you by other employees in the powerhouse?

A. Yes, sir.

Q. (By Mr. Rissman) How many were brought to you altogether?

A. I don't remember.

Q. Approximately.

552 A. I haven't any idea.

Q. Five or six, do you know?

A. I don't know.

Q. Now, will you answer my question, and tell us what

there is on this postal card, Exhibit 19 for identification, that made it necessary for you to say in your letter of April 16th; "We are not in favor of the union?"

A. I think the inference on the card that—or, the statement on the card that "only the hours that you men wish to work remain to be settled" is an entirely—is entirely a false statement, and in contradicting that I made this statement as you have it on that letter.

Q. If the men in the powerhouse did use Mr. Kingsland and his organization as their representative for collective bargaining would your position with reference to that statement No. 1 be the same?

A. Yes, it would still be the same.

Q. So that although the choice of the employees for collective bargaining agency does not make any difference to the company, it still does not favor a union?

A. I think that is right.

Q. Is that your understanding of the obligation of the company under the National Labor Relations Act?

A. I do—

Mr. Lamfrom: Just a moment. I submit that question is not a proper question.

553 The obligation to the company under the National Labor Relations Act has nothing to do with the attitude of the company, as to whether or not it favors unions. It can favor a union or not favor a union and still comply with every obligation of the Wagner Act.

Mr. Rissman: I submit the company's attitude is not important if the company maintains that attitude among its officers and among its agents themselves, but the moment the company indicates to its employees that they are not in favor of a union, that attitude is highly significant in a proceeding of this kind.

Trial Examiner Batten: Read the previous question.

(The record was read.)

Trial Examiner Batten: I think the answer to the previous question is of such a nature I will permit him to answer this question.

Now, do you have the question?

The Witness: It is my understanding under the Act that as long as we stick to facts we are not overstepping our bounds.

Q. (By Mr. Rissman) Is it your understanding under the Act that an employer has the right to tell its employees

its position with reference to favoring or not favoring a labor union.

554 A. I think if they ask for it, yes.

Q. Which employees asked you if you favored or did not favor a union, which powerhouse employees?

A. This was one of them, and I have a couple of others, I don't recall who they are, though.

Q. Do you feel and do you know whether or not this statement "We are not in favor of a union" might have any effect upon employees in their choice of a labor organization to represent them?

A. I don't think it would.

Q. Why wouldn't it? Did you hear my question?

A. I thought I answered.

Q. I said, why wouldn't it.

Trial Examiner Batten: Will you read the question, please.

(The record was read.)

Mr. Lamfrom: I suggest you repeat the former question so that the witness gets the connection.

Trial Examiner Batten: The question, Mr. Falk, is why wouldn't the attitude—was that it?

Mr. Rissman: Let's have it read.

Trial Examiner Batten: Will you read the previous question.

(The record was re-read.)

The Witness: Well, I talked to most of the men out

555 at the powerhouse and we had a pretty friendly talk over it, so that we would know where—

Q. (By Mr. Rissman) Where—

Mr. Lamfrom: Let him finish. Finish your answer.

The Witness: And I think those men out there understood very clearly that if they chose to have Mr. Kingsland as their representative, that we would go along with them on it.

Q. (By Mr. Rissman) Where did you speak with them, and when?

A. About the plant.

Q. In the plant?

A. Sure.

Q. During working hours?

A. Yes, sir.

Q. Do you recall whether it was before or after this letter was sent?

A. Both.

Q. Both?
A. Yes.
Q. At those request did you speak there, or was it your suggestion and idea to go out and talk to them?
A. Well, I always talk to our men.
Q. Please answer my question.
A. I don't have to be requested, I can go out and talk to them.
556 Q. Do you gather them all together?
A. No.
Q. Or talk with them individually?
A. I talked with them individually.
Q. Did you know at that time how many of them had chosen Mr. Kingsland's organization?
A. No.
Q. Did you inquire?
A. No. I inquired of Mr. Kingsland.
Q. Did you inquire of the men?
A. No.
Q. You were not interested?
A. Not particularly.
Mr. Lamprom: I submit, Mr. Rissman, that if you give the rest of the statement of the 16th of April you would show perfectly clear what the position of the company was.
Mr. Rissman: The statement is in evidence and the Examiner will be able to see it.
Q. (By Mr. Rissman) In your conversation with the men in the powerhouse did you tell them that you were not in favor of a union?
A. I don't know; I did in this letter, but I don't know whether I did in my conversation.
Q. Were there ever any letters or notices sent out to employees of the company other than those in the powerhouse?
557 A. I don't know.
Q. Did you send any?
A. Not that I recall.
Q. And this statement "We are not in favor of a union" was prompted, as you say, by what you call a misleading statement on the postal card?
A. I didn't say "misleading statement," I said, "a false statement," I think.
Q. A false statement.

A. Yes.

Q. Is this your position, "We are not in favor of the union," the same position you have with respect to employees in the plant other than the powerhouse?

Mr. Lamfrom: Do you understand that question, Mr. Falk?

The Witness: Yes.

Q. (By Mr. Rissman) If the employees of your corporation should choose an organization, a labor union to represent them for the purposes of collective bargaining and that unit was found to be appropriate by the Board would you deal with such a union?

A. Yes, sir.

Q. Have you in any way changed, the position of the company changed with respect to favoring or not favoring a labor organization?

A. I don't think so.

558 Q. What is the reason that you would deal with such a labor organization?

A. We are going to abide by the law.

Q. Has the position of the company with reference to the methods of collective bargaining been likewise changed by the law?

A. I don't know whether I understand exactly what you are driving at.

Q. The company bargained collectively with the Works Council?

A. Yes.

Q. Has the company changed its policy with reference to methods of collective bargaining from what it was when they bargained with the Works Council?

A. I should say substantially not, no.

Q. Then the method to be pursued by the company in bargaining collectively with an organization of employees is the same now as it was when you bargained with the Works Council?

A. I just don't know what you are getting at, I can't quite follow you there.

Q. You have indicated, Mr. Falk, that the policy of the company with reference to dealing with labor organizations has necessarily been changed because of a change in the law, is that right?

A. We were bargaining with our employees before that

law went into effect, through our Works Council in substantially the same manner that we would bargain with any other organization, as I understand it.

Q. In formulating the policy of the company with reference to collective bargaining what guides the company?

A. The law, I should say.

Q. Does the company depend upon any organizations for advice or suggestions as to the meaning and interpretation of the law?

A. Yes, I should say that we get communications from various sources.

Q. What are some of those various organizations?

A. Well, the National Manufacturers Association, National Founders Association, National Metal Trades Association, and some of them come from the Chamber of Commerce of the United States.

Q. Your company, The Falk Corporation, is a member of the National Metal Trades Association?

A. Yes, sir.

Q. For how long has it been such a member?

A. Well, for a good many years, but I don't know just how long.

Q. The National Metal Trades Association has been in existence for 37 or 38 years now. Were you one of the first members or did you come in sometime after that?

560 A. I cannot answer, I don't know that.

Q. But you are a member at the present time?

A. Yes.

Q. You personally are an officer of the local Metal Trades Association?

A. Yes, sir.

Q. What office do you hold?

A. Just now I am president of the local.

Q. How long have you been president?

A. I think three years.

Q. Did you hold any office prior to that time?

A. No, no official office; I was chairman of the apprentice committee for a good many years?

Q. What committee?

A. The apprentice committee.

Q. Are the policies and principles of the Metal Trades Association the same today as they were when you joined the Association?

A. I don't know, I don't know what they were when we joined.

Q. Do you know what they are today?

A. What do you mean, what are you referring to now?

Q. With reference to labor relations.

A. Well, I think they are very largely educational and constructive principles that they have been following for
561 the last 10 or 15 years, since I have had any part in it.

Q. The National Metal Trades Association in its bulletins and other correspondence advises employers on matters of legislation affecting labor relations?

A. Yes.

Q. And do you get their interpretations of the law as they see it?

A. That interpretation comes through counsel, yes.

Q. Are the counsel for the National Metal Trades Association Messrs. Fyffe & Clarke?

A. Yes, sir.

Q. Of Chicago?

A. Yes, sir.

Q. Who are their counsel locally?

A. They have no counsel.

Q. Do they depend upon these retained counsel in connection with their definition work for member organiatizons?

A. Not the Metal Trades Association as such, no.

Q. Do they recommend counsel to members of their Association?

A. No.

Q. The members of the National Metal Trades Association, Mr. Falk, are guided in their dealings with employees and other matters, by the declaration of principles of the Association, are they not?

562 A. Only if they care to abide by them.

Q. Is it not obligatory upon the members to abide by the declaration of principles?

A. No, sir.

Q. Isn't there a penalty of some sort or another upon any member who fails to abide by the declaration?

A. I don't know.

Q. The constitution of the National Metal Trades Association would have that information, would it not?

A. You have it before you and I haven't, I can't tell you.

Q. Have you ever read it?

A. No, sir.

Q. Have you ever read the declared principles?
A. Yes.
Q. To what extent does The Falk Corporation follow the declaration of principles of the National Metal Trades Association?
A. Not any in particular.
Q. In general?
A. I would not say any in general, unless it happens to be something that we agree with.
Q. Which of those declarations do you not agree with?
A. I don't agree—
Mr. Lamfrom: Just a moment. That is a rather unfair question to put to a person. He says he has no knowledge of what the declarations are, and he is asking him which
563 ones he does not agree with, and unless the witness is allowed to refresh his recollection of the declarations, what the declarations are, he cannot give an intelligent answer.
Mr. Rissman: I accept the suggestion of counsel and will allow Mr. Falk to review the declarations of principles together with the constitution.
Mr. Lamfrom: Assuming all this to be so, Mr. Examiner, counsel for the Labor Board would contend, I presume, that the Metal Trades Association have laid down certain principles and that Mr. Harold S. Falk is president of the local, but I cannot see the relevancy of it at all.
Trial Examiner Batten: Well, I think it is relevant in this way: If the constitution and declaration of principles of the organization are in evidence or the witness has them, and his company is a member, I think it is relevant for him to state as to what ones of those principles he favors or does not favor, and as to how relevant that may be, I think the Trial Examiner will pass upon at the time he considers the report.
I think I stated in a previous case that I don't know that every man who belongs to an organization wants to subscribe 100 per cent to everything it does or all of its policies. However, they are members and I think it is proper that he should state what ones of those principles—
564 Mr. Lamfrom: This company adheres to?
Trial Examiner Batten: Adheres to, and which ones they do not.
Mr. Lamfrom: Well, if it goes just to that extent I think

you are absolutely right, the relevancy is there, but I mean certain questions of the Metal Trades are not relevant.

Mr. Englehard: May I ask Mr. Rissman this question, whether or not that pamphlet or that bulletin shows the presently existing constitution and presently existing declaration of principles or is this something old?

Mr. Rissman: This contains—for the record I will identify it.

I have here a document that I will ask to be marked Board's Exhibit No. 20 for identification, being a report of hearings before a subcommittee of the Committee on Education and Labor, the United States Senate, with particular reference to the constitution and declaration of principles set out at page 1002 of the exhibit, entitled "The Constitution of the National Metal Trades Association as identified and produced before the United States Senate by Homer D. Sayer, the Commissioner of the National Metal Trades Association."

Mr. Engelhard: And at what date?

Mr. Rissman: The hearings conducted before the Senate Committee were held January 14th and 15th, 21st, 22nd and 23rd, 1937.

565 Mr. Englehard: Well, would that be relevant then in any event, because the Labor Act was held constitutional on April the 12th, and it may be that the policy of that Association has changed since then.

Mr. Rissman: I have asked Mr. Falk once and I will ask him again, if the policies and declaration of principles in the constitution of the National Metal Trades Association have been changed recently, within the last six months, if you know?

The Witness: That is a matter of determination of the executive board, and I don't know whether it has been changed.

Q. (By Mr. Rissman) Have you received any notice as president of the Milwaukee chapter of the National Metal Trades Association, have you been notified in any manner of any change in the declaration of principles or the constitution?

A. Only talking with Mr. Sayer. He has been discussing some changes.

Q. Have any changes been effected?

A. Not that I know of.

Trial Examiner Batten: Mr. Rissman, I believe if there is no objection we will adjourn until two o'clock.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2:00 o'clock p. m. of the same day.)

566 After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 2:00 o'clock p. m.)

Trial Examiner Batten: I believe we will proceed, gentlemen.

I wonder if you will just state your name, now.

Mr. Wilson: FRED WILSON.

Trial Examiner Batten: Fred Wilson?

Mr. Wilson: Yes, sir.

Trial Examiner Batten: You are a member of the Independent Union of Falk Employees?

Mr. Wilson: Yes, sir.

Trial Examiner Batten: As I understand, Mr. Burke's partner, Mr. Clark, advised you that it is proper for us to proceed.

Mr. Wilson: Yes, sir.

Trial Examiner Batten: Here is Mr. Clark now.

Mr. Clark, we have your permission to proceed in case you don't happen to be here?

Mr. Clark: Yes. It was just that some of this testimony will not affect our organization, that was being put in.

Mr. Rissman: May I have a brief recess for about five minutes, Mr. Examiner? I would like to speak to Mr. Goldberg and Mr. Schultz.

567 Trial Examiner Batten: Yes.

(A short recess was taken.)

Trial Examiner Batten: I think I would like to make the statement into the record at this time, that counsel for all interested parties have agreed that the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528, the Independent Union of Falk Employees, and the International Union of Operating Engineers, Local No. 311, are labor organizations within the meaning of the Act, subject to such evidence as the parties care to introduce, without any restrictions in it.

We are ready to proceed.

HAROLD S. FALK, resumed as a witness by and on behalf of the National Labor Relations Board, being previously duly sworn, testified further is follows:

Direct Examination (Continued).

Mr. Englehard: Mr. Rissman, I have here Exhibit No. 20 Do you know what that is? That is the Senate—

Mr. Rissman: The Senate Committee.

Mr. Englehard: Thank you.

Q. (By Mr. Rissman) Mr. Falk, during the noon recess you have had an opportunity to examine Board's Exhibit No. 20 for identification, with particular reference to the declaration of principles of the National Metal Trades Association?

568 A. I have, yes, sir.

Q. Can you tell us now to what extent the policies of The Falk Manufacturing Company are based upon the declaration of principles as set out by the Association?

A. Couldn't we take that apart, Mr. Rissman, and take them one at a time?

Q. Yes.

A. It would be a little simpler; I haven't got a photographic mind.

Q. Keep this before you. With reference to dealing with labor organizations does the policy of The Falk Corporation differ from the principles as set out by the National Metal Trades Association?

Mr. Lamform: In this exhibit.

The Witness: You are referring now to item 1, concerning employees, that paragraph?

Mr. Rissman: Yes.

Trial Examiner Batten: What page?

Mr. Rissman: Page 1010.

The Witness: Well, I should say that we subscribe to that so long and insofar as it does not conflict with the present law.

Q. (By Mr. Rissman) Will you look through the items set out on that page and tell us which of those are not followed by The Falk Corporation in its relations with its employees?

569 Do you want me to read these items?

Q. Read them to yourself—

Mr. Englehard: May I not suggest, Mr. Rissman, that he read item 1 and then express his answer upon item 1, and make it part of the record.

Mr. Rissman: I will offer the declaration of principles in evidence and Mr. Falk may modify any of those that are not followed by his corporation.

Trial Examiner Batten: As I understand your question to Mr. Falk now is to state those principles which his company does not subscribe to.

Mr. Rissman: That is right.

The Witness: Did I answer the question on No. 1?

Q. (By Mr. Rissman) Yes.

A. Well, on No. 2, we disapprove of strikes and lockouts; that I think we subscribe to.

I think the last line here after the semicolon, where it says "neither will the members of the Association deal with striking employees as a body" would be in direct conflict with the law, and I don't think we want to be in conflict with the law; so I would say we disagree with that.

Q. The policy of your corporation would be to deal with employees who were on strike; is that right?

A. I think we subscribe to item 3 there again, except perhaps the present day interpretation of loyalty for the
570 interests of your employer, I don't know what interpretation you might put on that.

Q. What interpretation does The Falk Corporation put on it?

A. Well, so long as a man who works for us did his work conscientiously and in our interest we would have no fault to find with him.

Q. You do not feel then as some employers may feel, that an employee is disloyal if he joins a labor organization other than one that his the approval of the company?

A. No, I wouldn't say that.

Mr. Lamform: Excuse me. You mean you don't feel that a worker who joins the union to which you may not, or for which you may not have the highest regard is disloyal by reason of the fact that he is a member of that union?

The Witness: That is what I mean, yes. I thought Mr. Rissman got that interpretation.

Mr. Rissman: I understood.

The Witness: You want me to comment on the apprentice question here?

Q. (By Mr. Rissman) No, we are dealing now only as to those principles affecting employer and employee relationship, particularly with reference to collective bargaining, the freedom of organization and those matters.

A. Under 5 "The responsibility for management, method and the production of our shops rests upon us, and no re-
571 striction upon these matters will be allowed", I should say we subscribe to that except insofar as it may possibly be construed to be relating to wages or hours of work or conditions.

Q. What is the policy of the company as relating to wages, hours and conditions of work?

A. We are very agreeable to bargain with that in accordance with the law.

I should say, the next paragraph, we do expect our people to produce properly and pay proper compensation therefor.

Then again the question of type of pay or premium, piecework or contract or other system, I should say under today's situation would be a matter that might be the subject for bargaining and we would be willing to discuss that with the men and bargain with them on it.

Q. So that practically up to this point now the declaration of principles of the National Metal Trades Association are not binding upon you, or your company would not follow them insofar as they had been modified or limited by this law?

A. I think that is right.

Q. Is that true with respect to the rest of the declarations?

A. Well, there is nothing in the law that prevents a man from leaving our employment, and it is the privilege of
572 the employer to discharge any man any time he sees fit.

I think our record stands for itself on that; we don't just up and fire people without giving due consideration to the length of service, and so forth.

Q. At the present time you recognize that there are circumstances which previously might be cause for discharge of a person but would not be today?

A. I do.

Q. And to that extent, that paragraph is limited by the law?

A. Yes. Item No. 7 again, we subscribe to that item prac-

tically all the way through, and again if there is any need for any modification there to comply with the law, I think we would be inclined to.

Q. Paragraph 7, entitled "Concerning disagreements", do you know what the general practice was with reference to that prior to the enactment of legislation guaranteeing to employees the right to be represented?

A. No, I don't.

Q. Let me ask you this way: as a matter of practice was not that paragraph included to give the employer the right to use that vernacular wherever he felt it was necessary to deal with a group of employees because of any particular action on their part?

A. Well, I don't know, Mr. Rissman, I didn't have
573 much to do with the writing of this.

Q. I appreciate that.

A. I work a little at our own plant; I am not much of an association man anyway.

Q. Do you recall—can you recall when you saw these declarations of principles before this morning?

A. No, I can't.

Q. It has been so long ago?

A. Quite a while ago.

Q. You don't refer to them?

A. No.

Q. But can you tell us generally?

A. No, I think the men themselves will probably testify to that, that we have tried to pay equitable wages.

Q. But with reference to the declaration of principles of the National Metal Trades Association, you say you haven't referred to them for some time and have probably been unacquainted with them.

A. I don't know that I ever have.

Q. You never have?

A. I don't think so.

Q. Can you tell us whether you are generally familiar with the broad principles with which the National Metal Trades Association concernes itself in matters of labor relations?

A. Yes, I would say I was.

574 Q. What is your understanding of those broad principles?

A. Well, since my activity with the Association the effort has been largely in an educational direction.

Q. You mean in apprentice training?

A. Not only that, in foreman training, the question of equitable wages, proper shop conditions, sanitation and safety and matters of that kind.

Q. What has it been with reference to labor unions in collective bargaining, in strikes and lockouts, and methods of dealing with employees?

A. Well, they are pretty definitely set down there, Mr. Rissman.

Q. I mean aside from that, what was your general understanding of the Association principles in that respect?

A. Well, that we did everything in our power always to avoid strikes.

I think we were always rather proud of the fact that comparatively few strikes took place in our member plants. I think if you will refer to any discussions that were had before the Association, that was one point that was always mentioned, that the most of our association member plants were rather free from strikes and labor disputes.

Q. Could it be said then, Mr. Falk, that with respect to the matters that the Association dealt with regarding employee organization and bargaining collectively, the at-
575 titude and principles of the Association were for the employer not to recognize an outside union?

A. I think that is right.

Q. And for the employer not to enter into closed shop agreements?

A. That is right.

Q. And for the employer in the event of a strike of his employees, to operate his shop with people furnished by the Association?

A. You are referring now to a lot of these things before the enactment of the law?

Q. Yes.

A. That is right.

Q. And even after the enactment of the law those broad principles of the Association were modified merely to come within the law, or rather eliminated?

A. I don't think that is quite right. I think you will find that they have taken a pretty liberal attitude which I think can be pretty definitely established by looking over the so-called guiding literature, or whatever your expression was

of that this morning, I think it would pretty clearly indicate heir attitude.

Q. Now, your labor relations with your employees and in he publication of the statement of policy, and also in the writing of the letter to the employees in the powerhouse, 76 were you guided by literature and statements of the National Metal Trades Association or mere you guided by our own ideas on the subject?

A. I think that was my own idea.

Q. After you wrote that letter to the men in the powerouse and after you spoke with them, do you remember what ffect, if any, that letter had on the men?

A. No.

Q. Do you know whether it tended to encourage or disourage their membership or application for membership in ocal 311?

A. I don't know whether it did or not.

Q. Was it intended to promote or discourage their membership in Local 311?

A. No.

Q. Aside from the purpose you have already stated what ther purpose did you seek to serve by writing that letter to hem?

A. I don't know that I had any other.

Q. Did you know and did you feel at the time of the letter hat a statement of the company's position with reference to n outside union would have any effect upon the men as to whether or not they would join an outside union?

Mr. Engelhard: Just a moment. That letter does not necessarily indicate any objection to any outside union 77 or favor to any other kind of union. The letter on its very face states the men may join any union they see t.

Mr. Rissman: He has stated the company does not favor abor unions.

Mr. Engelhard: The question does not say "labor unions".

Trial Examiner Batten: What was the question?

(The question was read.)

Trial Examiner Batten: I will sustain the objection to hat question. I don't recall that there was any reference n that letter to an outside union.

Mr. Engelhard: No, there is not.

M. Rissman: Strike the word "outside" and leave it union".

Trial Examiner Batten: He may answer that question, if that part is stricken from the question.

Mr. Rissman: That part may be stricken.

Trial Examiner Batten: Will you read the question again, now.

(The question was read as follows:

"Did you know and do you feel at the time of the letter that a statement of the company's position with reference to a union would have any effect upon the men as to whether or not they would join a union?")

The Witness: No, I would answer that, no.

578 Q. (By Mr. Rissman) In your experience in the operation of the plant, Mr. Falk, do you know what would be the general effect and result on the employees of such a letter to them?

A. Well, I can't say for anybody else, but I think in our case, it is my personal feeling that it would not make any great difference.

Q. Why wouldn't it make any difference in your case?

A. Because we have always been very free to discuss matters with our men and I think they know the attitude in which we discuss them with them.

Q. Prior to this time, the time of this letter what was there in the experience of the company that would lead the employees to believe that they could join outside unions and that the employer would deal with such outside unions?

A. Will you state that again? That is rather long.

Mr. Rissman: Will you read the question, please.

(The question was read.)

The Witness: I cannot answer that question.

Q. (By Mr. Rissman) Well, at any time before 1936 or before 1937, did the company deal with an outside labor organization?

A. No.

Q. So that the employees had no way of knowing except through statements of the company, the company's attitude to an outside labor union; isn't that true?

579 A. I wouldn't say that was necessarily true.

Q. Well, how would the employees know your attitude except through statements of the company or through experience of the company?

A. Well, we are not in the habit of making very many statements except by way of consultation with the men.

Q. Well, directing our attention now to the letter written to the operating engineers or to the powerhouse employees, you say that was the only published statement so far as your employees were concerned, indicating the attitude of the company toward unions?

A. Well, that one and other ones that we posted.

Q. Which one came first?

A. Well, the date of this is April 16th, and the date of the other April 21st, isn't it?

Q. Yes. So that before April 16th the employees in the powerhouse had no indication of the company's attitude towards labor unions except what they may have gained through personal conversation with you or other officers of the company?

A. I think perhaps that is right.

Q. (By Trial Examiner Batten) Mr. Falk, when you issued this letter you did not have in mind that it might in any way influence the employees? What was the purpose of issuing it?

580 A. This April 16th letter, you mean?

Q. The one that had been introduced as an exhibit, yes, that is it.

A. I issued that because I tried to make an answer to a communication that they had gotten from the outside union, which to my way of looking at it, was an entirely false statement of the situation.

Q. Did you expect the employees to give consideration to your statement setting forth your views? You at least expected them to give some thought to your statement in your letter, did you not?

A. Yes, I would say yes.

Q. (By Mr. Engelhard) In that connection, of course, you have in mind the entire letter, Mr. Falk?

A. I certainly did.

Trial Examiner Batten: Well, I referred to the entire letter.

Q. (By Mr. Lamfrom) Was there anything in the fact that you considered the statement on that postal card to be false as reporting an interview with you, and the facts connected with which were not the fact—

Trial Examiner Batten: He just stated that was the reason.

Mr. Lamfrom: May I finish?

Trial Examiner Batten: Yes.

581 Q. (By Mr. Lamfrom) (Continuing)—that led you to express yourself as to your preference for or against a union?

In other words did the fact—let me put it differently to you—that the union had misstated what you had said in this meeting that you had with the representative of the union, to the extent that it led the men to believe that you were already to sign a contract with them, did that lead you to express a preference for or against the union in this statement you made to the employees?

A. Yes, I think it did; I think that was what really prompted this letter, the fact that they were making statements that were not true.

Q. (By Trial Examiner Batten) And was that the only reason you stated that you were against the union?

A. Well, I would say this, Mr. Batten: I figured that I could make a statement of fact without cross purposes, without getting the cross purposes—

Q. My question is, was the only reason that you made the statement "We do not favor the union", because of the misstatement on the postal card?

A. Yes, I would say yes, to this extent, that I thought it was up to me to make our position clear, inasmuch as it had been befogged very considerably by the card.

Q. Was that the only reason that you were against the union at that time, because of this misstatement?

582 A. No, I would not say that.

Q. Well, what were the other reasons?

A. Well, I thought I stated some this morning, that I don't like to do business with an outside party; I don't think they have been shown that they have been entirely responsible, and therefore I felt it was perfectly fair that we make a statement about that, making our position clear.

Q. (By Mr. Rissman) Mr. Falk, in addition to the letters and personal conversations that you have had with employees is it not true that employees in your plant would know the position that you had or took with reference to labor organizations because of public addresses or public statements that you have made?

A. I don't know.

Q. Well, have you made public statements and public addresses either through the press or over the radio indicat-

ing your views on labor organizations and other matters relating thereto?

A. I talked once before the Junior Association of Commerce over the radio.

Q. When was that?

A. Oh, I don't remember.

Q. Approximately?

A. I haven't any idea; it seems to me it must have been a year ago.

583 Q. Just about a year ago, and that statement in addition to being carried over the radio, received a good deal of publicity in the local newspapers?

Mr. Engelhard: Now, what statement do you refer to, Mr. Rissman?

Mr. Rissman: The speech of Mr. Falk to the Junior Chamber of Commerce a year ago.

The Witness: Well, it was reported in the papers, that is all I know.

Q. (By Mr. Rissman) And from that statement or that speech could there not be impressions as to your attitude toward labor organizations?

A. I don't remember the context of that speech, so I couldn't say.

Q. Wasn't that speech very definitely concerned with your policy toward labor unions and their irresponsibility and how they do not benefit the workers, and generally what might be termed by a good labor unionist, a tear-down speech rather than a build-up one?

A. Perhaps so.

Mr. Lamfrom: May I inquire, Mr. Rissman, whether you have a copy of that speech?

Mr. Rissman: No, I haven't.

Mr. Lamfrom: The record does not indicate what the speech contained.

584 Mr. Rissman: Except as explained by Mr. Falk.

Mr. Lamfrom: Well, he said, "perhaps so", but it is not very clear as to whether or not his interpretation—

Trial Examiner Batten: Mr. Lamfrom, when the time comes for cross examination, or at any time that you care to, you may have Mr. Falk explain just what was in it. If you happen to have a copy of it you will be privileged to introduce it.

Mr. Lamfrom: Well, I assume, your Honor, that in order to make this record connected up, that this time would be

proper, if he has it, to introduce it in evidence and then it would be a connected story.

Mr. Rissman: I am willing to accept Mr. Falk's statement as to what the speech contained.

Mr. Lamfrom: That is nice of you.

Q. (By Mr. Rissman) Since the passing of the Works Council, Mr. Falk, how has the corporation, if at all, engaged in collective bargaining with representatives of its employees?

A. Through the Independent Union.

Q. The intervening petitioner here, called Independent Union of Falk Employees?

A. Yes, sir.

Q. In any other manner, in any other manner than with that union?

A. Not for the whole group, no, but individually we will discuss anything with anybody at any time.

585 Q. When did you engage in collective bargaining with the Independent Union?

A. Well, from the time that we recognized them.

Q. When was that?

A. Some time early in April, I don't recall the date.

Q. Was that recognition made known?

A. I think there was a letter that was signed by the president of the company acknowledging them as the bargaining agents.

Q. Do you have that letter with you? Is that the information—

A. I think Mr. Lamfrom has it.

Mr. Lamfrom: Yes, we have it. Will you get that letter for him.

Just a minute, that is my cigar.

Mr. Engelhard: I am not trying to shoot a snipe.

Mr. Rissman: Thanks.

Q. (By Mr. Rissman) I hand you herewith—

Mr. Rissman: I now offer in evidence if the Examiner please, Board's Exhibits Nos. 17, 18 and 19, being letters identified by Mr. Falk, together with a statement of policy he identified as having been posted in the plant.

Trial Examiner Batten. If there is no objection they will be received.

(Whereupon, the documents above referred to, marked
586 BOARD'S EXHIBITS NOS. 17, 18 AND 19, respectively, were received in evidence.)

Mr. Engelhard: How about Exhibit No. 20, Mr. Rissman?

Mr. Risman: I will offer that exhibit, Exhibit No. 20, which has printed in it the constitution and declaration of principles of the National Metal Trades Association.

Mr. Lamfrom: Why not designate the pages and then it will be definitely set out where that is.

Mr. Rissman: We shall do that. I believe the declaration of principles are on page 1010, and that is the last page of the constitution.

Trial Examiner Batten: I believe they are—they start on page 1002, does it not, the constitution?

Mr. Lamfrom: That is right, 1002 to 1010.

Mr. Rissman: Inclusive.

Trial Examiner Batten: If there is no objection it will be received.

(Whereupon, the document above referred to, marked BOARD'S EXHIBIT NO. 20, was received in evidence.)

Q. (By Mr. Rissman) I now hand you Board's Exhibit No. 21 for identification, which is a letter in response to a subpoena served upon the corporation, addressed to Messrs. Fred Wilson, Joseph Trost and Carl Menz, dated April 23rd, 1937, advising the persons named that the company
587 will recognize them as the sole bargaining agency for employees of the Falk Corporation, and will ask you if that is the letter you referred to, signed by Herman W. Falk, president?

(Handing document to witness.)

A. That is right.

Q. This letter, Mr. Falk, refers to a conference with a committee. Were you present at that conference?

A. Not at that time; I was out of town when they had this one.

Q. Were you present at the conference at which the Independent Union or any of its representatives demanded that they be recognized as the sole bargaining agents?

A. I don't think so. This is the only one that I recall anything about, I wasn't there.

Q. Tell us when was the first time you met with the representatives of the Independent Union?

A. Well, some of them came into my office some days before this, I don't know how long.

Q. Who came in?

A. I think John Mitchka.

Mr. Lamfrom: What is the date of that letter?

Mr. Rissman: April 23rd.

Mr. Lamfrom: April 23rd?

588 Mr. Rissman: Yes.

Mr. Lamfrom: I think this will clear it up.

Mr. Rissman: Excuse me, I think it is called for in the subpoena, but we do not have it.

Q. (By Mr. Rissman) I hand you herewith Board's Exhibit No. 22 for identification and ask you if that has ever been served upon or seen by you?

(Handing document to witness.)

A. Yes, I have seen that.

Q. And tell us briefly just what that is?

Q. Yes, for the record.

A. Well, it is just a statement of the fact that articles of incorporation of the Independent Union of Falk Employees were filed with the Secretary of State, and they informed us that they have approximately 400 employees of the company who have signed applications to date.

Mr. Lamfrom: May I just ask a question?

Mr. Rissman: Yes, sir.

Q. (By Mr. Lamfrom) Exhibit No. 22, Mr. Falk, is a notice dated April 20th, 1937 to The Falk Corporation, from Carl Menz, Joseph Trost and Fred Wilson, designated therein as organizers, notifying The Falk Corporation of the organization of the Independent Union of Falk Employees, and in substance really requesting that the company pick a time and place where they may meet with you to discuss the question of collective bargaining on behalf of

589 members of the Independent Union of Falk Employees; is that correct?

A. Yes, sir.

Q. (By Mr. Rissman) Is this the first you heard of the Independent Union of Falk Employees?

A. No, I think not.

Q. When did you first hear about the Independent Union?

A. Well, I don't know when exactly, several days perhaps before that.

Q. And from whom did you hear it or about it?

A. I think from Mitchka, and I am not sure who the other two were; I am quite sure Mitchka was one of them.

Q. John Mitchka?

A. Yes, sir.

Q. And who were the others?

A. Leslie Greget, I believe—

Q. And was Stickman the third man?
A. I don't recall.
Q. How did you hear about it from them and where did you hear about it?
A. They came into my office and told me they were going to form this organization.
Q. What did you say?
A. I don't recall what I said.
Q. Do you recall you said anything?
590 A. Oh, I said something undoubtedly.
Q. Did you tell them at that time you did not favor unions?
A. No, I don't think I did.
Q. Did you approve of their idea?
A. Yes, I did.
Mr. Engelhard: Now, do you mean mentally or openly, is that what you mean, Mr. Rissman?
Mr. Rissman: I am trying to get the conversation; Mr. Falk does not remember.
Mr. Engelhard: I would like to know what you mean when you say "you approved".
Q. (By Mr. Rissman) Your approval, did you announce your approval of the idea?
A. No, I don't think I announced my approval of the idea.
Q. What did you say to them at all?
A. I don't remember what I said to them.
Q. Did they ask your advice on the subject, notify you they were forming it?
A. I think primarily they came in to ask me whether I knew of an attorney that can handle their affairs for them.
Q. And to whom did you refer them?
A. I mentioned two names.
Q. Whose names?
A. Mr. Irving Fish and Mr. Burke.
Q. Mr. Burke is associated with Mr. Clark?
591 A. Yes, sir.
Q. Who is now representing the Independent association?
A. As I understand it, yes.
Q. Prior to this meeting with those men, the three men, two of whose names you know and the third whose name you cannot recall, did you know anything about the Independent Union being formed in your plant?

A. Yes, I knew in a general way something was going on.

Q. What do you mean, in a general way, Mr. Falk?

A. Well, some of the men had talked to me as I went through the plant about it, saying they were going to do it.

Q. Directing your attention to approximately April 8th, 1937, do you recall on that date you attended the last meeting of the Works Council in the plant?

A. I don't remember what date it was; I attended a meeting, I don't know whether it was a Works Council meeting or not, I doubt whether it was. It seems to me that there was a lot went on at the last Works Council, meeting, but I don't recall the date of it.

Q. Do you recall there was a meeting of the Works Council on April 8th?

A. No, I think not.

Q. Do you recall the meeting of the Works Council where you announced an increase in wages and some adjustments in wages?

592 A. Yes, I recall the meeting, but I don't recall the date.

Q. It was April 8th—I mean you would not say it was not?

A. No, I would not say it wasn't correct, because I don't know.

Q. Do you recall any statement you made at that meeting of the Works Council with reference to an Independent Union?

A. At the meeting of the Works Council?

Q. Yes.

A. No, I do not.

Q. Well, do you recall any meeting of your employees where you spoke about an independent union in the month of April, prior to the time that you were advised that the Independent Union of Falk Employees was formed?

A. Yes, I think so.

Q. Tell us about that meeting, where was it and when?

A. Well, there were a group of men met under the hospital, as I recall it.

Q. Yes.

A. And I think I was downtown that day, and they asked me to come and I come in rather late.

Q. Was that on Monday, April 12th?

A. I can't answer that, I don't know.

Q. You don't remember the day of the week?
A. No.
Q. What time of the day was it?
593 Mr. Engelhard: Mr. Rissman, we will concede for the purpose of the record that the meeting was held on April the 12th.
Mr. Rissman: Thank you.
The Witness: It was shortly after noon, I would say about one-thirty or two o'clock, along about that time.
Q. (By Mr. Rissman) Did you go to that meeting at the request of these men?
A. Yes, I was sent for, they asked me to come over.
Q. What did you say at the meeting, if anything?
A. Well, I was asked what—or asked to explain, if I could, the Wagner law to the men, and I think I told them, as I recall the conversation, that I was not a lawyer, and that I could tell them only what impressions I had of their rights under the law.
Q. At the time you spoke to them did you know that the Supreme Court had already rendered its decision in the National Labor Relations Act cases?
A. Oh, I don't recall that, Mr. Rissman.
Q. Who were some of the employees who requested your presence at that meeting?
A. I haven't any idea who asked me to come over. There must have been 20 men that sent word over to the office that the boys wanted to see me, that they were having a meeting. I haven't any idea who asked me to come.
594 Q. And you gave them your impressions of the Wagner Law?
A. As near as I could, yes.
Q. What did you tell them with reference to unions?
A. "I think one of the men asked me how our business might be affected if we had no organization in our plant and were doing business with some other plant that had a union, and, as I recall the statement that I made to them, that it didn't seem to me that it would make any particular difference whether they belonged to the C. I. O. or the A. F. of L., or some other organization, that there was just as much chance of a conflict between the A. F. of L. and a C. I. O., and the C. I. O. and an independent or any other combination that there might be; that it wouldn't make any difference, in my mind, relating to our business, and I think I cited at that time as an example of the possible conflict between A.

F. of L. and C. I. O., about the Allis arrangement down here at the exposition at that time, when the C. I. O. trucks from Allis came down, and the A. F. of L. made them transfer it to the A. F. of L. trucks, and took it in. That was the substance of my conversation, as I recall it."

Q. When you were called down to this meeting did you know that meeting was called for the purpose of determining whether or not a union should be formed, or did you know why this meeting was being held?

A. No, I had no idea at all. I was not at the plant when the men called, I was simply called in and they
595 asked me those questions and perhaps some others.

Q. Did you inquire of the employees the purpose of that meeting under the hospital?

A. No.

Q. When did you find out what the purpose was?

A. I never did find out.

Q. Even at a later date?

A. No, I don't know today what the purpose of that meeting was.

Q. Were there any meetings similar to that?

A. Not that I attended.

Q. Do you recall at that meeting you spoke to the employees and told them that, something to this effect, that they could not longer have the Works Council, that it was necessary to join and have a labor organization, and the A. F. of L. and the C. I. O. were fighting among themselves, so therefore you recommended an independent union where you could meet around the table with all the boys and discuss matters?

A. I don't think that is right, Mr. Rissman.

Q. Anything similar to that?

A. I don't think I made a statement like that.

Q. You said the only illustration you had of the A. F. of L. and the C. I. O. was the one concerning Allis Chalmers truck drivers?

596 A. That is all I recall.

Q. When the employees—when the three employees came to you to inquire about your recommendations for an attorney what else took place besides that, besides you naming—

Mr. Engelhard: Just a moment, I object to including in that question "recommendations for an attorney".

He did not testify they came to him to recommend an attorney.

Trial Examiner Batten: I think he testified—

Mr. Rissman: I think his testimony is that they wanted some advice on who to get.

Trial Examiner Batten: They came to Mr. Falk and wanted to know if he knew an attorney that they might use to assist them in organizing, and that you gave the names of two attorneys.

The Witness: I did.

Mr. Rissman: The form of the question does not make any difference.

Q. (By Mr. Rissman) Was there anything else that took place at that meeting?

Mr. Engelhard: Just a moment. Then you withdraw that question?

Mr. Rissman: I will change it, I mean it is not important whether he said he recommended them. If he did recommend them it will appear.

597 Q. (By Mr. Rissman) At that meeting where these employees came to you and there was some conversation about an attorney for their Independent Union was there anything else that took place?

A. As I recall the incident these men came in and asked me whether I could suggest an attorney to them; I asked them whether they didn't know any, and they said no, and I mentioned the names of Mr. Irving Fish and Mr. Burke, and then they asked me to call Mr. Burke, one of them asked me to call up Mr. Burke, which I did.

Q. What conversation did you have with Mr. Burke?

A. Only that there were three men in my office and they wanted to form an independent union and would like to have a date with him.

Q. And you arranged an appointment?

A. I think I did.

Q. Following that meeting where you suggested Mr. Burke as attorney when was the next time you as an officer of the corporation had any meetings or conferences with representatives of the Independent Union?

Mr. Engelhard: Now, just a moment. Again I object to the inclusion in that question of the phrase "suggested an attorney".

There is no evidence that he suggested an attorney. The

men asked the names, and then named two names and
598 then they requested him to call up Mr. Burke.

Trial Examiner Batten: Of course whether you say "suggested", "recommended" or "named", I assume that—

Mr. Rissman: If that is the objection, I can change the question.

Trial Examiner Batten: I assume that what Mr. Rissman means is the testimony thus far with respect to the way in which the Independent Union secured an attorney.

Mr. Engelhard: Yes, and let the testimony speak for itself without interpreting the testimony in subsequent questions.

Trial Examiner Batten: You may answer that.

The Witness: May I have it read?

Trial Examiner Batten: Read the question.

(The question was read.)

The Witness: I don't remember.

Q. (By Mr. Rissman) Can you tell us why at this meeting where you talked about attorneys, you mentioned or stated the names of Mr. Fish and Mr. Burke rather than other attorneys you know?

A. Simply because I happened to have heard they had done that kind of work before.

Q. Where and how did you hear that?

A. I cannot answer that, I don't know.

Q. When you say "that kind of work" you mean you knew that Mr. Fish and Mr. Burke had assisted in the
599 organization of Independent unions?

A. Yes.

Q. Do you know of any independent unions they have created in addition to the Falk Independent Union?

A. Well, I happen to know one that Mr. Fish worked with, the Bucyrus Erie.

Q. Bucyrus Erie?

A. Yes, sir.

Q. Do you know of any others that Mr. Burke—

A. No, sir.

Q. —or his firm have participated in?

A. No, I do not.

Mr. Engelhard: Mr. Rissman, I assume that the last question referred to at that time, and not now.

Mr. Rissman: I asked for any meetings with representatives.

Mr. Engelhard: No, you asked him the question whether

he knew what kind of independent unions Mr. Burke and Mr. Fish had dealings with and he stated that he knew at that time that Mr. Irving Fish had dealt with the Bucyrus union, and he also indicated that he did not know what kind of unions Mr. Burke had dealings with.

Now, it may be that since that time he has had information regarding some.

600 Mr. Rissman: My question referred to at that time.

Mr. Engelhard: Yes, I assumed so.

The Witness: That was what I understood.

Q. (By Mr. Rissman) You understood it that way?

A. Yes, sir.

Mr. Rissman. I am not attempting to learn whom Mr. Burke represents.

601 Mr. Engelhard: No, what I thought I would do would be to clear up the record, to keep it straight.

Q. (By Mr. Rissman) Do you recall the nature of any meetings that you have had with representatives of the Independent Union with reference to collective bargaining since their incorporation?

A. Yes, I do.

Q. What meetings do you recall, Mr. Falk?

A. I can't give the dates of them.

Q. The approximate dates, and tell us what was discussed.

A. I can't even give the approximate date.

As I recall, one of the first meetings that we had after the formation of the Independent Union, we had a discussion about a general wage increase, and at that same meeting there was a request by the Independent Union for the reinstatement of three employees that we had previously discharged.

Those were two questions as I recall it at our first—that were discussed at our first meeting.

Q. Did you ever discuss with representatives of the Independent Union the number of employees they represented in the plant?

A. Yes, I think I did.

Q. Do you know and can you tell us if the Independent Union represents a majority of the employees to entitle them to be the sole bargaining agency for all of your em-

602 ployees?

A. At the time that they applied we felt quite sure that they did have a majority.

Q. Did they submit any proof of such representation?

A. They were questioned as I was informed. Of course I wasn't at that particular meeting when they were recognized.

Q. But did they submit any proof to you of their statement?

A. I was not at that meeting, I don't believe so.

Q. Was there ever an election at your plant conducted by some impartial body or person where the employees determined whether or not they chose the Independent Union as their bargaining agent?

A. No.

Q. Do you know if the Independent Union has as its business representatives, persons other than employees of The Falk Corporation?

Mr. Clark: Just a minute, that is objected to as immaterial. There is nothing in this law which requires—

Trial Examiner Batten: Well, I presume that in view of the discussion that there has been here about inside and outside unions, and so forth, that he may answer that question.

Mr. Rissman: Read the question please.

(The question was read.)

The Witness: No, I don't think they have.

603 Q. (By Mr. Rissman) Then would you say that the Independent Union of Falk Employees is an inside or outside organization?

Mr. Lamfrom: I object to that question, because we have not had a definition in this record which is susceptible—

Trial Examiner Batten: Of course I suppose that the witness has not as yet qualified as an expert—

Mr. Lamfrom: On inside and outside unions.

Mr. Rissman: According to Mr. Lamfrom's definition.

Trial Examiner Batten: On labor unions, and the facts with respect to its organization and so forth, I believe that the Trial Examiner would be able to determine from those facts the type of organization, although I am not setting myself up as an expert.

Mr. Lamfrom: The distinguished counsel and myself, he having had such a great mass of experience in this line of work, might not be able to agree upon what is commonly known as an "inside" or "outside" organization.

Sometimes outside organizations are inside organizations, and vice versa.

Q. (By Mr. Rissman) Let me ask you, Mr. Falk, what is your understanding of an outside labor union?

A. Well, I have never heard it used in quite that way, as an outside organization.

Q. How have you heard it used, Mr. Falk?

A. What did you say?

604 Q. How have you heard it used?

A. What, labor union?

Q. Yes.

A. Well, just referred to as a labor union, never as "inside" or "outside."

Q. In your mind or in your practice, has there been any distinction between an inside or plant union and a union organization where the representatives are persons who are not employees of the company?

A. I don't know that I can exactly say this, unless you are bringing in the old Works Council because perhaps they were in some cases plant organizations—

Q. That is right.

A. —stimulated by the company.

Q. Using now the words—using now the Works Council as an example might it not be said that the Works Council was an inside organization as compared to the International Association of Machinists as an outside organization?

A. Oh, it might be, I suppose.

Q. On that basis would you say that the Independent Union of Falk Employees is an inside or an outside labor union?

A. Inasmuch as we had nothing to do whatever with it, I would say that one qualifies as an outside organization just as much as the other.

Q. In other words, inasmuch as the representatives, 605 officers and members of the Independent Union are confined to Falk employees, it would not be an outside organization, is that right?

A. I don't see why not.

Q. Would you say it was the same type of organization as the Amalgamated Association of Iron, Steel and Tin Workers?

A. I don't know much about it.

Q. You have heard of it?

A. I have heard of it.

Q. You know that it is in existence at your plant.

A. Yes.

Q. What is the difference in your mind between the Independent Union of Falk Employees and the Amalgmated Association of Iron, Steel and Tin Workers?

A. One has got a professional organizer and the other has not, that is about the only difference that I can see.

Q. Do you know if the Independent Union of Falk Employees has any affiliation with other regular organizations?

A. No, I do not.

Q. Do you know whether the Amalgamated Association of Iron, Steel and Tin Workers has any affiliation?

A. No, sir.

Q. Don't you know that it is an affiliate of the C. I. O.?

A. No, I don't know.

Q. That is news to you.

606 A. That is news, yes.

Q. Do you know that the Amalgamated Association of Iron, Steel and Tin Workers is an affiliate of the Steel Workers Organizing Committee?

A. No.

Q. Do you know Mr. Adelman?

A. Yes, sir.

Q. Do you know his position?

A. I know he is an organizer.

Q. For whom?

A. The C. I. O.

Q. Didn't Mr. Adelman come to you in his representative capacity, representing the Amalgamated Association of Iron, Steel and Tin Workers?

A. I think he did.

Q. Has The Falk Corporation entered into negotiations with the Independent Union for collective bargaining?

A. Yes.

Q. Has the Independent Union made any demands upon the Falk Corporation for an agreement?

A. Yes, they have.

Q. Have they presented their demands in writing?

A. Yes.

Q. Are those documents available?

A. I think the documents are available, but they are
607 held in abeyance at Mr. Clark's request until this trial is over, so nothing has come of it.

Q. (By Mr. Engelhard) By "Mr. Clark", you mean the Regional Director of the Board?

A. Exactly.

Q. (By Mr. Rissman) I mean are they available here? Aren't those documents that would be covered by subpoena served upon you calling for all records and documents?

A. They have never been acted upon, Mr. Rissman, they were just submitted and left—

Q. Do you have those?

A. I haven't them.

Mr. Engelhard: I don't think we have them here.

Mr. Rissman: Will they be produced?

Mr. Engelhard: We will produce them tomorrow if they are available, that is, if we have them. I haven't seen them in my files.

Trial Examiner Batten: I think we will recess for ten minutes now, gentlemen.

(A short recess was taken.)

Trial Examiner Batten: I believe we will proceed now, gentlemen.

Q. (By Mr. Rissman) Mr. Falk, do you recall how many meetings you have had altogether with the Independent Union of Falk Employees or their representatives?

608 A. No, I do not.

Q. You do not?

A. No.

Q. Is it your opinion, Mr. Falk, that the company prefers to deal with the Independent Union of Falk Employees rather than with the Amalgamated Association of Iron, Steel and Tin Workers?

A. Yes.

Q. Can you tell us why?

A. Because they are a responsible body and incorporated and can be sued.

Q. By "responsible body" you mean in addition the fact that they have a charter from the state of Wisconsin?

A. They can be sued, they are incorporated.

Q. Do you know if they have any property?

A. No, I do not.

Q. Do you know what the company could gain in the event of a suit against the Independent Union of Falk Employees?

A. I had not thought of any particular gain, except they are incorporated, they can be sued, and they are a responsible body.

Q. Is that the only preference you have for them, the

fact that they are incorporated, and the Amalgamated Association of Iron, Steel and Tin Workers is not incorporated?

A. No, I think I answered that once before, Mr. Rissman, when I said we would very much prefer to do busi-
609 ness with our employees, without the influence of an outside organizer, than we would the other way.

Q. If the Independent Union of Falk Employees had an outside organizer, as you say, would you still prefer it to the Amalgamated Association?

A. I don't know.

Q. Do you at the present time contemplate the execution of an agreement with the Independent Union, that you have in mind their ability to be sued?

A. Will you say that again?

Mr. Rissman: Will you read the question please.

(The question was read.)

Mr. Engelhard: Now, your Honor—

The Witness: I don't think I understand that.

Q. (By Mr. Rissman) You said you preferred the Independent Union because it is a corporation and can be sued.

A. Yes.

Q. Is that right?

A. I said "Yes".

Q. Do you have an agreement with them at the present time?

A. Not now, no.

Q. Is there an agreement being negotiated between you at the present time?

A. Not now.

610 Q. (By Mr. Lamfrom) Why not?

A. There was one in preparation and at the request of the Regional Director here, Mr. Clark, we suspended all discussion.

Q. (By Mr. Rissman) You say there was an agreement in preparation?

A. Yes.

Q. Is it proper to say that if it were not for the intervention of Mr. Clark, that agreement would have been consummated?

A. I think so, yes.

Q. If a majority of your employees chose the Amalgamated Association of Iron, Steel and Tin Workers, would you consummate an agreement with that organization?

A. The same kind that we would consummate with the Independent, yes.

Q. Would you consummate an agreement that was agreeable to you and to the Amalgamated Association?

Trial Examiner Batten: I assume that is on the theory that they agreed and arrived at the same points.

Mr. Rissman: I don't know what kind of an agreement the Independent has presented. It may be entirely dissatisfactory to a labor organization.

Trial Examiner Batten: Well, what I meant, Mr. Rissman, was, the question does mean that if the parties arrived through negotiations at an understanding, that they would be willing to enter into such an agreement.

611 Is that the sense of the question?

Mr. Rissman: That is right.

The Witness: I would say so, yes.

Q. (By Mr. Rissman) Mr. Falk, can you give us your opinion and the opinion of the company as to which organization, the Independent Union of Falk Employees, or the Amalgamated Association of Iron, Steel and Tin Workers, could best accomplish the purposes of collective bargaining for the employees at your plant?

A. I did not get you.

Mr. Rissman: Will you read the question please?

(The question was read.)

The Witness: I can give you my personal opinion.

Q. (By Mr. Rissman) Give it to us please.

A. The Independent Union.

Q. Why?

A. Well, I thought I had answered that two or three times, because we would rather do business with our own employees because they are a reasonable body, organization.

Q. Does the fact that the Independent Union have a charter from the State of Wisconsin make it a better labor organization than the Amalgamated Association of Iron, Steel and Tin Workers?

A. I don't know.

612 Q. Does the fact that the Independent Union is limited for its bargainers to people in your plant make it a better organization for collective bargaining than the Amalgamated Association of Iron, Steel and Tin Workers?

Mr. Clark: I presume that question is based on the assumption that is the fact.

Mr. Rissman: If it is the fact.

The Witness: Isn't that a part of the Wagner law, Mr. Rissman?

Trial Examiner Batten: Will you read that question, Mr. Reporter?

(The record was read.)

Trial Examiner Batten: Do you mean from the standpoint of the employees or the standpoint of the company?

Mr. Rissman: Upon the basis that Mr. Falk stated he believes the Independent association could effectuate better bargaining for the employees than the Amalgamated Association.

Mr. Lamfrom: Then he would naturally believe it is a better organization for collective bargaining from both the employer and employee standpoint, wouldn't he?

Mr. Rissman: I am trying to get the reason for his preference.

Mr. Lamfrom: He has given them half a dozen times.

Trial Examiner Batten: He may answer the question.

613 The Witness: I don't think I can answer it any more definitely than I have before. I have tried to answer two or three times; I will still make the same answer.

Q. (By Mr. Rissman) What is there about outside representation of the Amalgamated Association of Iron, Steel and Tin Workers that in your mind makes it a less desirable labor organization than the Independent Union?

A. Well, I don't like the type of organizer they have got, nor do I like the idea of an outside organizer.

Q. And beyond what is your like or dislike in this case, have you had any experience with them?

A. I had one meeting with him, and I know of a good many of his activities aside from that, and I have therefore formed my opinion.

Q. Was your opinion formed before you had this one meeting with him?

A. No.

Q. It was formed afterwards?

A. Yes.

Q. Was that the meeting of May 5th—

A. What is that?

Q. In the Eagle Building?

A. Yes, that was the only meeting I have ever had with him.

Q. And from that meeting and what was said at that
614 meeting and what you heard at that meeting, you concluded that an outside organizer could not best represent your employees?

A. Well, I say his subsequent activities.

Q. What particular activities do you have in mind, Mr. Falk?

A. Well, after the one at Waukegan, and the thing that happened here the other day in the Harnischfeger case, and other activities on his part in the Harnischfeger case.

Q. You mean the thing that was reported to have happened here. You don't know as a matter of fact anything happened here.

A. No.

Q. And by Waukegan, you refer to the strike at the Fansteel Corporation.

A. Yes, sir.

Q. At Waukegan, Illinois.

A. Yes, sir.

Q. Where Mr. Adelman, the representative of the Amalgamated Iron, Steel and Tin Workers was held in contempt of court for violating an injunction against picketing.

A. Yes.

Q. And upon those reasons your dislike for an outside organizer is based.

A. That is—

Mr. Engelhard: He didn't say an outside organizer,
615 he said this particular organizer.

Trial Examiner Batten: I was just going to say, I think thus far we had probably better distinguish between this organizer, the one that has been under discussion, and organizers in general.

In other words, the witness may have a different idea as to organizers in general than he does of the particular organizer that he has been talking about.

Q. (By Mr. Rissman) Let's limit it to this organizer.

Mr. Engelhard: And then we can take up the others.

The Witness: That is all I can think of now.

Q. (By Mr. Rissman) Now, tell us, Mr. Falk, what your objection to outside organizers other than this one are based upon, any experience you have had with outside organizers?

A. I have had very little experience outside except of this incident, with Mr. Kingsland, and I think there again Mr.

Kingsland made the statement, or perhaps not Mr. Kingsland, somebody else—whoever it was on the postal card made a statement that was entirely in error, and that leads me to the conclusion that most of them work the same way.

Q. You met with Mr. Kingsland?

A. Once, yes, sir, or twice.

Q. What was the opinion that you formed of him as a result of this meeting?

A. As an individual Mr. Kingsland seemed to be a
616 very nice young fellow.

Q. And as a representative of labor, how did he seem?

A. Well, I think he just does—I think he very definitely misrepresented the meeting with me.

Q. You are now referring to the postal card. I mean your impression of him in your meeting with him.

A. I told you that I thought he was very gentlemanly and very decent.

Q. Have you ever had any other experience with outside labor organizers except these two meetings?

A. No, none direct.

Q. Have you had any indirectly?

A. No.

Q. So that your dislike for labor organizers, for outside labor organizers is actually based upon the postal card that you believe contains a false statement and the newspaper reports you have had of Mr. Meyer Adelman in Waukegan and the alleged occurrence, what allegedly occurred in the courthouse the other day?

A. Of course the general reputation they have, I think since this thing was organized.

Q. General reputation?

A. The General Motors agreements that were violated and a few other things like that.

Q. Do you know the General Motors agreements were violated?

617 A. I know that they had a sit-down strike after they had an agreement signed.

Q. But you don't know whether the sit down strike was the result of activities by the union or activities by the employer?

A. No.

Q. And you don't know whether the sit-down strike was caused by the company union, independent union men, or was

caused by members of the United Automobile Workers of America?

A. It is pretty well conceded that it came from the organization I think.

Q. Well, do you know?

A. I don't know of my own knowledge, no.

Q. All right. Other than the automobile workers General Motors situation, and aside from the two incidents that you have related to us, upon what was your opinion of outside organizers based?

A. That is about all I guess.

Q. Do you know any reason aside from those that you have already given us why the Amalgamated Association of Iron, Steel and Tin Workers could not represent your employees very effectively in their collective bargaining relationship with the company?

A. Except as I told you before, I believe they are an irresponsible body.

618 Q. In the event the Amalgamated Association of Iron, Steel and Tin Workers were to make a demand upon your company for collective bargaining, would they be accorded the same privileges and courtesies that you now accord to the Independent Union?

Mr. Engelhard: Just a moment.

That is objected to, your Honor, because there is no choice left to this company, if the Independent Union represents a majority there isn't any choice, it must deal with that union and cannot deal with the C. I. O.

If that question were framed upon the thesis or theory that if the C. I. O. had a majority and had been designated by the majority of employees, then of course the employers would have to recognize it for the purpose of collective bargaining. It would not have any choice under the law.

Mr. Rissman: My question is concerned not with the obligations of the company under the law. The company knows that or can be advised of that.

The question is concerned with the attitude of the employer towards the obligation.

Trial Examiner Batten: I assume the question is, would the company or Mr. Falk extend the same courtesies and deal with the Amalgamated Association in the matter of such a demand.

Mr. Rissman: I will stipulate for the record that the
619 Falk Company would not deal with the Amalgamated Association unless it is required and obligated to do so by law or by order of the Board.

That is a part of my question.

Mr. Engelhard: That is not correct.

Mr. Lamfrom: Of course it takes two parties to make a stipulation. You could not do any stipulating here without us. Suppose we would not stipulate—

Trial Examiner Batten: Will you read the question, please?

(The question was read.)

Mr. Rissman: Assuming the Amalgamated Association of Iron, Steel and Tin Workers had a majority.

Mr. Lamfrom: Exactly. If the question had in it those words under the same circumstances as the Independent, it would be a perfectly proper question.

Trial Examiner Batten: I don't presume Mr. Rissman has any objection, he has added, assuming the Amalgamated had a majority.

Mr. Lamfrom: Yes, they are about the same—

Trial Examiner Batten: Everything else being equal.

Mr. Lamfrom: And everything else being equal.

The Witness: I answer that question Yes, Mr. Rissman.

Q. (By Mr. Rissman) I didn't get that.

Trial Examiner Batten: He said he would answer the
620 question yes.

Q. (By Mr. Rissman) Do you know who in the corporation besides you deals with representatives of the employes for collective bargaining?

A. Mr. Connell does very often.

Q. Who is Mr. Connell?

A. Mr. Connell is vice president, who has the duties really of comptroller.

Q. Are Mr. Connell's views, do you know, similar to your own preference for an independent or inside union?

A. I imagine very much the same.

Q. To what extent would your preference for such a union affect collective bargaining relationships between you and the Amalgamated Association of Iron, Steel and Tin Workers or any other outside union, assuming the outside union had a majority of your employees?

A. I don't think to any great extent. We have got quite

an interest in our own employees, and if it was in their interest, I think you would find we would be reasonably decent.

Q. Who would determine what was in their interest or the interest of the company?

A. I did not get that.

Mr. Rissman: Read the question please.

(The question was read.)

Mr. Lamfrom: What is in their interest?

621 Mr. Rissman: Whatever Mr. Falk had in mind in his previous answer.

The Witness: I can't get that.

Mr. Rissman: Will you read the question again?

(The record was again read.)

Mr. Lamfrom: I submit you have got a balled up proposition there.

Mr. Rissman: I am cross examining Mr. Falk.

Mr. Lamfrom: I know, but we are her to accomplish justice.

Mr. Rissman: Undoubtedly.

Mr. Lamfrom: And not to get each other into the position of saying what the testimony states.

Now, it does not mean much of anything because it does not appear yet what interest he is talking about or what interest you are asking about.

Mr. Rissman: It is the interest—

Trial Examiner Batten: Of course I presume that the Trial Examiner will read the testimony and can get what there is in it. If counsel does not feel it is clear, I think on cross examination he may straighten the matter out.

Q. (By Mr. Rissman) At the time the Independent Union came to bargain collectively for all the employees, did your Independent Union indicate what employees in the plant were eligible to membership?

622 A. Yes, I think they did.

Q. What was that indication, Mr. Falk?

A. I think they included all employees as far as I know.

Q. So that it did all of the bargaining of the plant.

A. Yes.

Q. The power house sought to be represented by Local 311, and the draftsmen and engineers?

A. Not the engineers, the draftsmen.

Q. Draftsmen and office employees.

A. And office employees.

Mr. Engelhard: Mr. Rissman, in this connection are you going to introduce Exhibits 21 and 22?

Mr. Rissman: Those two letters?

Mr. Engelhard: Those two letters, yes.

Q. (By Mr. Rissman) At the time the committee of three employees came to you, and there was a discussion about the attorney, did you know the attorney you referred them to—what is the name?

A. Fish.

Q. Fish and Burke represented incorporated unions, did you know they just represented independent unions?

A. No, I didn't know that.

Q. And you used no such distinction.

A. No.

Q. Do you know, Mr. Falk, if the corporation has done
623 anything or if any of the officers of the corporation have done anything to promote the welfare of the Independent Union?

A. No.

Q. Do you know if any of your supervisory employees, foremen or others, have indicated to the workers in the shop its preference for the Independent Union?

A. No, I don't.

Q. Do you know or has it been called to your attention in any way that certain of your foremen and other supervisory officials have been advising and instructing and threatening workers to join the Independent Union?

A. No.

Q. If such matters were brought to your attention, what would be the policy and attitude of the company?

A. We would object to it very strenuously, because we don't want that.

Q. Have your foremen or other supervisors been given instructions with reference to those matters?

A. I think practically all of them have, yes, sir.

Q. And what are their instructions?

A. Not to in any way coerce or influence any man in his choice of a labor organization, they know that.

Q. What are the rules of the company with reference to soliciting union membership in the plant during working hours?

A. It is not permitted.

624 Q. How long has that rule been in effect?

A. When we hire a man we hire him to work and

not to do other things on the job, and I think that is enough, with the understanding when we hire him, we hire a man, that he is not to do anything outside—that he is not to do any outside work of any kind.

We have no written rules.

Q. What is the fact as to solicitation of membership in any union on company premises by all employees in the plant after the formation of rules?

A. I think we have posted notices to that effect.

Q. When was that posted?

A. I don't remember.

Q. I just—

Mr. Engelhard: I have it here.

Mr. Rissman: I just want the date.

The Witness: I can't give that date.

Mr. Engelhard: June 24th.

Mr. Rissman: 1937?

Mr. Engelhard: 1937.

Mr. Rissman: Thank you.

Q. (By Mr. Rissman) Prior to the date of the publishing of that notice, what was the rule of the company, if it had a rule, with reference to outside activities of employes on company premises but on their own time

625 A. Just the same as indicated in that notice, Mr. Rissman; I don't think it had ever been posted before.

Mr. Engelhard: Well,—

Mr. Rissman: Mr. Engelhard?

Mr. Engelhard: Mr. Rissman, pardon my interruption, but I find this notice has to do with the collection of dues on the premises. That is the notice of June 24th.

Mr. Rissman: June 24th?

Mr. Engelhard: Yes.

Mr. Rissman: While we are waiting, Mr. Examiner, I offer BOARD'S EXHIBITS 21 and 22 in evidence.

Trial Examiner Batten: If there is no objection, they will be received.

(Thereupon the documents above referred to, were marked BOARD'S EXHIBITS NOS. 21 and 22, respectively, and received in evidence.)

Mr. Engelhard: I don't find any statement of that kind at this time, Mr. Rissman: It may be that a further search might develop it.

Mr. Rissman: All right.

Q. (By Mr. Rissman) At any time, Mr. Falk, have you indicated to any employees in the plant a preference for the Independent Union over the Amalgamated Association of Iron, Steel and Tin Workers?

A. To the employees?

626 Q. Yes.

A. No, sir.

Q. To anybody have you indicated such a preference?

Mr. Engelhard: Now, I submit your Honor, that is highly immaterial to the issue here. He may have indicated it to his wife, he may have asked anyone, and it seems to me that is going pretty far afield in this case.

Trial Examiner Batten: I will sustain the objection. He may testify whether or not he expressed any opinion to employees, foremen or superintendents.

Q. (By Mr. Rissman) Have you indicated such a preference to anybody in the employ of the Falk Corporation?

A. Not that I can recall.

Q. Have you indicated such a preference to any superintendent?

A. I may have.

Q. And to any foremen?

A. I don't know.

Q. Pardon?

A. I don't know, I may.

Q. Have you in conversation or a meeting with any other officers or supervisory officials of the company discussed the matter of the Independent Union as compared to the Amalgamated Association?

A. Yes.

627 Q. Do you recall how recent that was?

A. No.

Q. And do you recall when and where?

A. No.

Q. Where?

A. No.

Q. Has there been a meeting of the officials of the company for that purpose?

A. No.

Q. With reference to your instructions to foremen and supervisors, Mr. Falk, as to what they may or may not do in advising employees in connection with labor organizations, do you recall a meeting or banquet of foremen that was held some time in April, 1937?

A. I know something about it, yes; I wasn't there.
Q. You were not present?
A. No.
Q. Do you know where it was held?
A. Down in some hotel as far as I know.
Q. By whom was that meeting called?
A. I think we arranged to have a lawyer down there to talk to the men.
Q. What was said, what was talked about?
A. To tell them what they must do in relation to the Wagner law, in order that they should conform to the Wagner law.
628 Q. Who was the lawyer that spoke to them?
A. I think Mr. Peck from Mr. Lamfrom's office.
Q. Did anybody speak to the employees at that meeting?
A. I don't know.
Mr. Engelhard: You mean the foremen, not the employees?
Mr. Rissman: Yes, limit it only to foremen.
The Witness: To only foremen, I thought you asked in your question, you said supervisors.
Q. (By Mr. Rissman) My question was supervisors and foremen.
Prior to that banquet or dinner attended by the foremen where they were addressed by Mr. Peck, had it been brought to your attention that certain foremen had been acting in behalf of or in favor of the Independent Union of Falk Employees?
A. Mr. Landrey once or twice mentioned it to me.
Q. Who is Mr. Landrey?
A. One of the C. I. O.
Q. President of the Local of Amalgamated Association?
A. I think so.
Q. What action was taken in response to his speaking to you about it?
A. After he talked to me about it, I talked to various foremen about it to see whether they had done such a thing and I could not corroborate the statement.
Q. The foremen denied they had been doing that?
629 A. Yes, sir.
Q. All of them?
A. Well, I only spoke to one or two.
Q. Were those the ones he had complained about?

A. I think Mr. Green was the one he complained about mostly.

Q. Mr. Green, the superintendent?

A. Yes, sir.

Q. Did you speak to Mr. Green about it?

A. I did.

Q. Did he deny it?

A. He did.

Q. Did you make any further investigation to determine if any of the foremen were so engaged?

A. No.

Q. Do you know if Mr. Green or any others made such an investigation?

A. I think they did.

Q. Do you know what they found?

A. No.

Q. Did they report to you?

A. No, they did not report to me; therefore I took it for granted that everybody was properly advised.

Q. Did you instruct Mr. Green to investigate and find out if the foremen were engaged in union activities?

A. I don't recall.

630 Q. Do you know whether the supervisory officers of the corporation, those who are subordinate in position to you are aware of your preference for the Independent union over the Amalgamated Association?

A. I think so.

Q. Do you know whether they are in accord with that preference?

A. I think they are.

Q. Do you know whether or not the foremen in and about the plant during the working hours or after or before working hours would make known that preference to the employees?

A. No, I don't think they would.

Q. Do you know what the reaction was on the part of the foremen when they were advised by Mr. Peck that they were limited in what they could and could not tell the employees with reference to union organization or union affiliation?

A. I cannot answer.

Q. Do you know or was it later reported to you in some way that the foremen, particularly the superintendents and others resented the limitation and felt that they shou'd have

the right to express their opinion as to what labor organization the men should belong to?

Mr. Lamfrom: Even if that would be all true, what relevancy would that have upon the attitude of the company?

Trial Examiner Batten: I don't think it has any
631 relevancy because it does not make any difference how much he may resent a law, an ordinance or a regulation, the thing is, if he lived up to it.

He can go around resenting it twenty-four hours a day.
632 Mr. Lamfrom: That is right.

Trial Examiner Batten: I think the important thing is whether or not the foremen or superintendent took any affirmative action or did anything in violation of the law.

Mr. Lamfrom: That is right.

Trial Examiner Batten: I don't suppose we can assume that everybody in the United States is in hearty accord with all the laws there are.

Mr. Lamfrom: They would be pretty busy if they are.

Trial Examiner Batten: People may resent a lot of things and that is no indication they are not carrying them out.

Mr. Rissman: Except, if the Examiner please, that a foreman's resentment might manifest itself in the things he said and things he did around the plant.

Trial Examiner Batten: As to what John Jones, a foreman, did at a specific time, in the plant in violation of law, that is all that it is necessary to show, and his connection with it.

Mr. Rissman: We shall so show.

Trial Examiner Batten: Every foreman and superintendent may resent this Act and resent it very much, because oftentimes foremen and superintendents do resent changes; I mean they don't adopt new ideas readily, many of them, but the important thing is, did they do any affirmative act, did they say anything, did they give advice in the plant as
633 opposed to this law, that is the important thing.

Mr. Engelhard: Also, your Honor, as to whether or not they did so in violation of the instructions given them.

Mr. Rissman: That is entirely immaterial whether they did it in violation of the instructions, can't concern the question.

Mr. Lamfrom: Well, it concerns us though.

Mr. Rissman: Sure.

Mr. Lamfrom: As Judge Geiger once ruled, you know, there are two parties to a lawsuit.

Mr. Rissman: I don't know how Judge Geiger—

Trial Examiner Batten: I assume that you may show that, that is, I don't imagine that Mr. Rissman is going to bring out the points that you desire shown in this hearing, and therefore it leaves something for the respondent counsel.

Mr. Lamfrom: Well, judging from the thoroughness with which he has covered the ground he has not left much for us to do.

Mr. Rissman: If it is a fact that the foremen did this in violation of their instructions from Mr. Falk I think that should be made apparent now.

Mr. Lamfrom: I did not get that last.

Mr. Rissman: I say, if the activities of the foremen were in violation of instructions from Mr. Falk or instructions from the company I think that should be shown.

634 Trial Examiner Batten: I think the evidence already shows that if they did solicit members, if they did do these things during working hours, that they did it in violation of instructions because that shows now, that is, by the testimony of this witness.

I think we had better get down to this question that we have gotten away from.

What was the question?

Mr. Rissman: Read the question.

(The question was read.)

Trial Examiner Batten: I believe I shall sustain the objection to that question.

Q. (By Mr. Rissman.) As a general matter do the foremen obey or violate the rules and policies of the company with respect to their dealing with employees?

A. Will you repeat that question.

(The question was read.)

The Witness: They obey them.

Q. (By Mr. Rissman.) So that if in this connection the foremen violated the rules of the company it was in an unusual and extraordinary manner?

A. Yes.

Q. Mr. Falk, on May 1st, 1937 the company put into effect an increase in wages, a five and ten cent increase?

A. That is right.

635 Q. For various operations?

A. That is right.

Q. Was that carried generally throughout the plant?

A. Yes, all over the plant.

Q. All over the plant?

A. Yes.

Q. When did you decide to grant that increase?

A. Well, that really goes back to the Works Council days, the beginning of it.

Toward the end of the Works Council days that was discussed and practically agreed upon. Then when the Works Council went out of existence, the arangement went out of existence with the Council because I think, as I recall the statement, that if the Works Council went out of business that this arrangement would go out with it, and any new arrangement would have to be made with such an organization as existed at the time.

That was substantially the arrangement.

Q. What was to be the effective date of the increase, Mr. Falk?

A. The original intention was to be as of June 1st.

Q. And what prompted the company to move that date up to May 1st?

A. The meeting that you referred to some little time ago, that I had with the boys down under the hospital, I think 636 you referred to it as the meeting of April 8th.

Q. April 12th.

A. April 12th. Somebody in the group suggested that they thought it would be better if that increase were advanced one month, to the 1st of May, and as I remember the remark made to them at the time, "That is a matter I won't argue with you about, we will be willing to advance that to the 1st of May."

Q. Was the person who made that statement John Wilfeer?

A. I am not sure about that, he may have.

Q. It was made in the presence of 15 or 20 men who were there?

A. Yes, it was.

Q. It was indicated by John Wilfeer's question to you, in addition to what you have related, if that increase was advanced from June 1st to May 1st it would keep a lot of men from going into the C. I. O.?

A. No.

Q. Was anything said about the C. I. O. at that time?

A. In that particular connection?

Q. In connection with the raise.

A. Not that I recall, no.

Q. But you don't recall it you say, or it wasn't said?
A. I would say no.
Q. The raise was actually granted May 1st?
637 A. Yes, it was.
Mr. Lamfrom: What did that mean in dollars and cents to the corporation per year?
Trial Examiner Batten: Now, I don't want to restrict counsel, but everyone will have their turn, but I think that if we—
Mr. Lamfrom: I don't believe it is good practice either to interject questions when other counsel is examining, but once in a while a little question can either clear up or illuminate the path along which we are going and it is only in an instructive purpose that I do that.
Trial Examiner Batten: I realize that, of course, and I assume it is rather a substantial amount of money because after all no concern could give an increase without it costing money.
Mr. Lamfrom: And that was substantial.
Trial Examiner Batten: I think probably we will get along faster—
Mr. Lamfrom: All right.
Mr. Rissman: We don't question the wages.
Mr. Lamfrom: You don't question the wage policy of the company?
Mr. Rissman: No.
Mr. Lamfrom: Well, that is very nice, that is something.
638 Mr. Rissman: I am not bad.
Mr. Lamfrom: Yes.
Q. (By Mr. Rissman.) Mr. Falk, you stated that in connection with that increase it was understood that because of the Works Council going out of business the matter of the raise would have to be taken up with any new organization that came to the plant?
A. Yes.
Q. Was it taken up with the Independent Union?
A. They took it up with us.
Q. They took it up with you?
A. Yes.
Q. The raise was granted after they took it up with you?
A. Yes, sir.
Q. Although it was contemplated that raise would be

granted even before there was an independent union at the plant?

A. No, I tried to make it clear to you that the original agreement that we made with the Works Council was made in contemplation of the Works Council going on in existence. That was before, as I recall, quite some time before the Wagner Act, when it was under discussion in the court.

Q. Yes.

A. I think if you will refer to your minutes you will find the conversations very definitely recorded where I said to the fellows that if the Works Council went out of busi-
639 ness, that new negotiations would have to be opened up for the wage increase.

Q. Would that increase have been given if there were no negotiations by the Independent Union or if there were no Independent Union at all?

A. I don't know, I am not so sure it would.

Q. Is it proper to say that the credit for the raise is due entirely to the Independent Union, if any credit is due to that?

A. Well, it was brought up, I don't know who suggested—who should get the credit for it, if they shouldn't.

Q. At the time the matter was taken up with the Independent Union or the Independent Union took it up with the company was there a C. I. O. organization in the plant?

A. I don't recall just when the C. I. O. organization began there, I don't remember; I think there was, however.

Q. Did the company contemplate what effect on the organization activities of the Amalgamated Association of Iron, Steel and Tin Workers it might have if the company granted the raise originally requested by the Works Council now at the instance of the Independent Union?

A. No.

Q. Directing your attention to May 5, 1937, on that date you had a meeting in the Eagles Building, the Eagles Club building in Milwaukee with representatives of the Amal-
640 gamated Association of Iron, Steel and Tin Workers?

A. That is right.

Mr. Lamfrom: Why don't you introduce that whole business into the record?

Q. (By Mr. Rissman) And you represented the company at that conference?

A. I beg your pardon?

Q. You were there on behalf of the company?
A. I was there.
Q. Who else?
A. I think Mr. Connell was there, Mr. Green was there, and Mr. Henderson was there.
Q. Who is Mr. Henderson?
A. He is superintendent of the erecting No. 3 shop.
Q. Go ahead.
A. That is all I can recall.
Q. Some of your foremen were present?
A. I don't recall whether there were any more there or not.
Q. Who was there on behalf of the Amalgamated Association of Iron, Steel and Tin Workers?
A. Well, I couldn't name who was there; according to what Mr. Landry asked me at the time, there were about 23 of the fellows there.
Q. Was Mr. Meyer Adelman there?
A. Yes, he was.
641 Q. And the company was also represented by Mr. Leo Mann, an attorney?
A. That is right.
Q. Do you recall how that meeting was arranged, who arranged it and what the purpose of it was?
A. Mr. Landry came to me and asked me whether they would have a meeting with us and I said "Yes."
Then when he said there were to be 23, well, I said, "We haven't any place to have a convention here. If you want to have a convention you will have to go to a hotel"—
Mr. Engelhard: Will you talk a little louder so that we can hear you.
The Witness: When we finally decided to have the meeting we thought the place to have it was up in the Eagles' Hall, because we really had no place to accommodate that many people; so it was decided to have it at the Eagles Hall.
Q. (By Mr. Rissman) Who was to be present at that meeting when Mr. Landry made the arrangements with you, what was your understanding?
A. My understanding was that he wanted to have all the stewards in the shop there who were C. I. O. stewards.
Q. Who did you bring with you when you came to the meeting or who did you invite to come?
A. We invited about half a dozen of our employees to come.

Q. Which employees? I don't mean by name—
642 A. Well, they were—
Q. But, whether they were stewards or some other employees.
A. Well, they were fellows in the Independent Union.
Q. Did they come up?
A. They did.
Q. Tell us now that you mentioned it, what is there about the fellows in the Independent Union, as to whether or not they were active members of the Works Council during the time of its existence?
A. If you will state that question a little more definitely—
Q. Is it not a fact that the present officers of the Independent Union or at least most of them are the same men who were active on behalf of the Works Council during its organizing and existence?
A. No, I don't think so.
Q. Isn't Leslie Greget an officer of the Independent Union?
A. I don't know.
Q. Isn't he one of the representatives who met with you?
A. He did at the very beginning.
Q. If not one of the officers he was one of the organizers?
A. Yes, I think he was.
Q. Now, tell us as best you can what occurred at this meeting in the Eagles Hall.
Mr. Engelhard: I submit, your Honor, that meeting, there is a transcript of that meeting. That was a long dis-
643 cussion—
Trial Examiner Batten: Might I ask, Mr. Rissman—
Mr. Engelhard: 40 or more pages.
Trial Examiner Batten: What is the purpose of this, I mean from the standpoint, it is to show negotiations?
Mr. Rissman: It is to show the attitude of the company with reference to demands for collective bargaining made upon it by the Amalgamated Association.
Trial Examiner Batten: Well, might I ask this: is there a written transcript of the meeting?
Mr. Engelhard: There is.
Mr. Rissman: There is, but there is so much in that written transcript that should not be there or in any other transcript, that I hesitate to offer the transcript.
Trial Examiner Batten: I was going to suggest, if there is a transcript that you introduce and the Examiner will be

glad to take it and read it and I can probably draw some conclusions from the statements which are made there by the various parties.

Mr. Rissman: Will you stipulate that this is the transcript?

Mr. Lamfrom: I just want to look at it first.

Mr. Rissman: May I state quite generally—

Mr. Lamfrom: I will ask you, Mr. Falk, did you agree to furnish Mr. Adelman with a copy of the transcript of
644 proceedings?

The Witness: Yes.

Mr. Lamfrom: Of the meeting. And I will ask you to take a look at this document I hand you, and can you state to the best of your knowledge that is the transcript of the proceedings?

Trial Examiner Batten: That has the reporter's name on it.

Mr. Rissman: Yes, the reporter's name is in there.

Mr. Engelhard: I think his name is Cross.

Mr. Lamfrom: There is no question, we will stipulate that may be offered and admitted in evidence as the record of the meeting between the parties mentioned in your question, meeting of May 5th, 1937 at the Eagles Club in the City of Milwaukee, Wisconsin, commencing at ten o'clock a. m. and when it ended, I don't know.

Mr. Rissman: Will you further stipulate that was all the collective bargaining that existed between the corporation and the Amalgamated Association of Iron, Steel, and Tin Workers?

Mr. Lamfrom: I will stipulate that since that time Mr. Falk or the Falk Corporation have not been approached by the C. I. O. or any of their representatives for further collective bargaining.

Mr. Rissman: You are evading the question.

645 Mr. Lamfrom: Then bring it out.

Q. (By Mr. Rissman) At that meeting contained in this transcript, Mr. Falk, was any action—

Mr. Lamfrom: That is number what?

Trial Examiner Batten: Exhibit 23.

Mr. Lamfrom: That is an appropriate number for this exhibit.

Mr. Rissman: That was before my time.

The Witness: Well, I think, Mr. Rissman, that we advised

Mr. Adelman at the time that we had already given bargaining rights to the Independent Union and that according to the law there was nothing we could do about it, unless he preferred to have an election, in which case he had the law to go to; we couldn't stipulate one, and if he wanted one he could have one.

I think the sum and substance of the meeting is summed up in that practically.

Q. (By Mr. Rissman) Can you tell us what the purpose of the meeting was as expressed to you by Mr. Landry when Mr. Landry arranged for the meeting?

A. I don't recall what he asked. He asked me whether we would have a meeting with them for the purpose of collective bargaining, as I recall it, that was as far as it went.

Q. And the meeting as reported in some 55 pages of transcript, consisted of Mr. Mann telling Mr. Adelman that
646 because of the letter to the Independent Union the Falk Corporation had already obligated itself and could not enter into bargaining with the Amalgamated Association?

A. Substantially that, yes, sir.

Q. And Mr. Adelman protested that he was not interested in any letter to the Independent Union because the Independent Union was a company union and was not a labor organization at all?

A. That is what he said.

Mr. Lamfrom: And Mr. Mann and Mr. Adelman entered into a metaphysical discussion of their own minds on the Wagner Law, is that right?

The Witness: There were some metaphysical discussions on the men we were recognizing—

Trial Examiner Batten: Apparently some of these same issues came up in this meeting that are present in this hearing.

Mr. Lamfrom: That is it.

Mr. Engelhard: The transcript shows clearly Mr. Adelman did not demand exclusive bargaining rights and did not claim he represented a majority.

Trial Examiner Batten: I presume after I have read it I will be able to determine what the attitude of the parties was.

(Discussion off the record as directed.)

647 Q. (By Mr. Rissman) Can you tell us, Mr. Falk, why the Independent Union men were present at that meeting at your invitation?

A. Well, I thought that if they were going to have their gang, I would have a few guys hang around with me too.

Q. And why, Mr. Falk, was it necessary for the company at that meeting, a meeting for collective bargaining between the company and employees, representatives of the employees, was it necessary to have Mr. Mann present?

Mr. Lamfrom: Now, your Honor—

Mr. Engelhard: Let him answer that, go ahead.

Mr. Lamfrom: I think the court will take judicial notice why lawyers are present at any meetings.

Trial Examiner Batten: Well, do you want me to express my view on that?

The Witness: I will answer that question.

Q. (By Mr. Rissman) Was there any particular reason?

A. Yes, I think there was; if these fellows are going to get in some outside professionals to argue for them, I am going to do the same thing.

Q. You didn't feel there was anything wrong with you in taking an outside professional to represent you in collective bargaining negotiations?

A. No.

Q. Do you feel now there is anything wrong with 648 employees engaging outside professionals to represent them?

A. I said when they did it, then I did it.

Q. You thought it was wrong for them to do it?

A. I would rather do business with them alone.

Q. Just as they would rather do business with you alone?

A. I don't know.

Q. Did you feel that with the assistance of an outside professional to represent you, namely, the attorney, you could more effectively meet any problems that were raised and take up matters that might be taken up in such a conference?

A. What are you talking about now?

Q. The meeting of May 5th.

Mr. Rissman: Will you read the question, please.

(The question was read.)

The Witness: I will answer that, yes.

Q. (By Mr. Rissman) Don't you believe that your employees likewise feel that in meeting with their employer on matters of collective bargaining they might bargain more effectively and take up matters of collective bargaining if they have an outside professional, namely, their labor organizer?

A. They probably do or they would not have him.

Q. Was there any reason for your choice of your attorney that you had at that time?

Trial Examiner Batten: Now, I don't know, is that
649 particularly material? I think a man has a right to go out and select his attorney. I don't know if it would make any particular difference, Mr. Rissman, how he happened to select Mr. Mann.

Mr. Rissman: Well, it might.

Trial Examiner Batten: Unless there is something with relation to the issue in this case.

Mr. Rissman: The selection of Mr. Mann might have been prompted by matters other than Mr. Falk's personal selection of an attorney.

Trial Examiner Batten: Well, if that is the case you may show what those other things are.

Mr. Rissman: Who can better show it than Mr. Falk.

Trial Examiner Batten: But even granting that he was selected because he was particularly familiar with this situation and had previously represented some other association which made him competent to act, I don't see how that has any bearing, any particular bearing on his selection here.

Mr. Rissman: If the Examiner feels it is objectionable I will withdraw the question.

Trial Examiner Batten: What I am getting at is, if it relates to the issue I will allow it to be brought out, but that is the thing I don't see.

Mr. Rissman: In labor bargaining, Mr. Examiner, it is my feeling, and I believe the feeling of others that even
650 such as the matter of the selection of an attorney indicates the position and attitude of the company particularly—

Mr. Lamfrom: I don't think that.

Mr. Rissman: Particularly where it is known as it is in Milwaukee that the attorney is one who is famed for his activities in opposition to labor organizations.

(Discussion off the record as previously directed.)

Mr. Lamfrom: We object to the particular question addressed by counsel.

Trial Examiner Batten: I will sustain the objection to that question.

Q. (By Mr. Rissman) When you selected Mr. Mann as attorney did you know he was reputed to be a lawyer opposed

to labor organizations, and particularly the C. I. O. labor organization?

Mr. Engelhard: That is objected to as irrelevant, incompetent and immaterial.

Trial Examiner Batten: I will sustain the objection.

I think we will adjourn until nine-thirty tomorrow morning, gentlemen.

(Whereupon, at 4:55 o'clock p. m., August 16th, 1937, the hearing in the above entitled matter was adjourned until August 17th, 1937, at 9:30 o'clock a. m.)

654 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

(Caption—XII-C-57 and XII-R-85)

Room 409, Milwaukee County Courthouse,
Milwaukee, Wisconsin.

August 17th, 1937.

The hearing was resumed, pursuant to adjournment, at 9:30 o'clock A. M.

Before:

James C. Batten, Trial Examiner.

Appearances:

Robert R. Rissman and S. G. Lippman, Attorneys, on behalf of the National Labor Relations Board.

A. G. Goldberg, 511 Warner Building, Milwaukee, Wisconsin, appearing for International Union of Operating Engineers, Local No. 311.

Giles F. Clark, of Alexander, Burke & Clark, 110 East Wisconsin Street, Milwaukee, Wisconsin, appearing for Independent Union of Falk Employees.

Lamfrom, Tighe, Engelhard & Peck, by Mr. Leon B. Lamfrom, and Mr. A. J. Engelhard, appearing for the Falk Corporation.

655 PROCEEDINGS.

Trial Examiner Batten: I think we will proceed, gentlemen.

Mr. Goldberg: Mr. Examiner, I have here an amended

petition for intervention, and ask that it be admitted as Local No. 311 Exhibit 1.

Do you want to put that in as one of your exhibits, Mr. Rissman, or do you want to have it marked Local 311?

Mr. Rissman: It does not make any difference, I don't think it makes any difference whether it is a Board's Exhibit or your Exhibit.

Trial Examiner Batten: No. I think you may take this into the record please.

The Trial Examiner has received an amended petition for intervention which more specifically sets forth the complaint of the International Union of Operating Engineers, Local 311, against The Falk Corporation.

The amended petition has been served upon The Falk Corporation's attorneys, is that correct?

Mr. Lamfrom: That is correct.

Trial Examiner Batten. And it is understood that they will have until Wednesday morning, August 18th, to prepare an answer thereto.

(Thereupon the document above referred to was marked LOCAL 311'S EXHIBIT NO. 1, and received in evidence.)

656 Trial Examiner Batten: I believe we are ready to proceed.

HAROLD S. FALK, a witness called by and on behalf of the National Labor Relations Board, being previously duly sworn, resumed the stand and further testified as follows:

Direct Examination (Continued).

Mr. Rissman: Mr. Reporter, have you the last question that I asked yesterday?

(The record was read.)

Q. (By Mr. Rissman.) Do you know Anton Kinch?

A. Yes.

Q. How long have you known him about?

A. Oh, I guess four or five years.

Q. Anton Kinch was a former employee of The Falk Corporation?

A. That is right.

Q. Who was discharged by you on December 31, 1936?

A. That is right.

Q. And do you know that he worked for the corporation for approximately seven years before his discharge?

A. About, yes.

Q. Do you know that Anton Kinch was a member of the Works Council of the Falk Corporation?

A. Yes, sir.

557 Q. One of the employee representatives?

A. Yes, sir.

Q. Do you recall, Mr. Falk, during Mr. Kinch's term of office as an employee representative on the Works Council he presented to the Works Council for consideration of the company a plan of reclassification of employees and work?

A. That is right.

Q. Do you recall any conversation you had with Mr. Kinch with reference to that plan?

A. Prior to his having submitted it to the Council or afterwards?

Q. Well, do you recall whether or not there were any conferences prior to his submitting it?

A. Yes, there was.

Q. What was the nature of the meeting between you and Mr. Kinch prior to its submission to the Council?

A. Well, Mr. Kinch came in to the office I think at my request, as I recall it.

Mr. Lamfrom: I will give you these papers to refresh your memory as you go along.

The Witness (Continuing): And we discussed some general things that Mr. Kinch had on his mind at the time, and he said that he thought that some of the things that we were doing in the plant were not just right, that if we provided the proper incentive for our men they could do 30

658 per cent more work, or something to that effect; we had a general discussion of it, the details of it I don't recall, but I do remember very distinctly that I asked Mr. Kinch at the time whether he had a plan and he said he did, and I asked him what it was, and he said that it was not in shape.

I then said to Mr. Kinch, "Suppose you reduce your plan to writing and when you have gotten it in shape, let's you and I sit down and discuss it, and if you have got anything in that plan that is worth making use of, that we can get some benefit out of and the men can get some benefit out of, I will be glad to discuss it with you."

Q. (By Mr. Rissman.) You say Mr. Kinch came to you, or did you send for him?

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A. I don't recall, Mr. Rissman, what the circumstances were; I am inclined to think that I asked him to come into the office, although I am not sure about it.

Q. Did you know before he spoke to you in the office that he had some suggestion with reference to the earnings of men and different types of work?

A. Well, I knew he had something on his mind but I didn't know just what it was.

Q. Did Mr. Kinch reduce the plan to writing?

A. Later he did, yes, sir.

Q. And presented it to you?

A. Yes, sir.

659 Q. Do you recall the tenor of the plan and some of the reclassifications that would alter the policy of the company in its relation with the workers, just in a general way?

A. Well, his idea was to establish A, B, C, D grades for various different workers in the different departments, and those grades he had set up, as I recall it, with a rate classification or something to that effect.

I have the thing before me here, and you probably have it also. That is substantially what it was.

Q. Did you know of any activities of Mr. Kinch in and about the plant with reference to the plan prior to the time you had your first meeting with him?

A. Prior to the time of the first meeting?

Q. Yes.

A. No.

Q. Didn't you know, or weren't you advised by your superintendent or other officers of the corporation that Mr. Kinch had been submitting a petition and plan for the men to sign indicating their approval of the classification plan?

A. That was after the meeting that I have discussed with you just a moment ago.

Q. At the first meeting—that is, after the first meeting or after the second meeting?

A. I think it was after the second one, because I had a meeting previous to that with him too.

660 Q. Did you go over the plan with Mr. Kinch in the second meeting?

A. No, he didn't have it reduced to writing at the second meeting, we just discussed it at that time.

Q. Where did you see Mr. Kinch, and what time of day was it?

A. I have no idea.

Q. Do you recall that there was one meeting in your office when Mr. Kinch stated if you wanted to talk about the plan he suggested it be on his own time, and there was an appointment made for some time later in the evening?

A. I did talk to him one evening, yes.

Q. After the plan was discussed between you and Mr. Kinch, do you know if it was presented to the Works Council?

A. It was later.

Q. And was it openly presented to the company for its consideration?

A. Yes.

Q. What action was taken with reference to it?

A. As I recall, I answered it in writing to the Works Council.

Q. Was it an approval or disapproval of the plan?

A. It was disapproved.

Q. In its entirety?

A. Not exactly, I think there were some spots in it 661 that were—

Q. Your answer in writing was made to the Works Council at a meeting of December 10th, 1936?

A. I haven't the date on this sheet.

Mr. Engelhard: We will stipulate to that as to the date.

Mr. Rissman: Thank you.

Trial Examiner Batten: Mr. Rissman, do you propose to introduce as an exhibit the written plan and written answer to it?

Mr. Rissman: Yes, Mr. Examiner.

Mr. Lamfrom: You have got it in your hand, why don't you do that now.

Mr. Rissman: I don't have the plan in hand now.

Q. (By Mr. Rissman.) Is the plan contained in the answer, Mr. Falk?

A. No, there is reference to sections, but the plan is not contained in there; the proposal is entirely separate.

Q. (By Mr. Engelhard.) Mr. Falk, have you the document there that is entitled "Proposal"?

A. Yes.

Mr. Engelhard: Well, that is the plan.

Mr. Lamfrom: Let's use the one that Mr. Rissman has, Mr. Falk.

Mr. Rissman: I ask to have this marked Board's Exhibit

No. 24 for identification, being the minutes of the 41st
662 meeting of the Works Council, containing the proposal and statement addressed to the Works Council, signed by The Falk Corporation, the minutes of the meeting of the Works Council indicating also a vote of the representatives and the company's answer.

(The document referred to was marked Board's Exhibit No. 24, for identification.)

Q. (By Mr. Rissman.) I will ask you, Mr. Falk, if that contains the plan as submitted to you and the answer of the company?

A. That is right.

Mr. Engelhard: Now, are the three numbered Exhibit No. 24?

Mr. Lamfrom: I just want to get our copy back.

Mr. Rissman: Mr. Falk has yours.

Mr. Lamfrom: Are they the same?

Mr. Rissman: Yes.

Mr. Lamfrom: All right.

Mr. Engelhard: Mr. Rissman, are all three marked Exhibit 24?

Mr. Rissman: Yes, they are all pinned together, clipped together.

Mr. Engelhard: All right.

Q. (By Mr. Rissman.) After the answer of the company was submitted to the Works Council and the Works
663 Council acted on that answer as indicated by Exhibit No. 24, did you ever have any further conversation with Mr. Kinch?

A. I don't think I did until the end of the year.

Q. And that was on December 31st when he was discharged?

A. That is right.

Q. Can you tell us what conversation took place between you at the time, and where?

A. The conversation took place in my office about noon time as I recall it.

Q. And what was said?

A. Well, we discussed very general questions for a few minutes, and then I told Mr. Kinch that I thought the interests of the company would best be served if he severed his connection, to which he responded "That is all right with me, if you will have my check ready I will leave."

I said to Mr. Kinch then, "Your check is ready".

He got up and shook hands with both Mr. Connell and myself, and said "Good bye, no hard feelings", and left.

Q. What did—

A. In addition to that I advised him that compensation—unemployment compensation was due him also. I thought that it was only right that he should know that, and I advised him of that fact.

Q. What was the reason for the necessity of the severance of Mr. Kinch's connection with the company?

664 A. Well, first of all the original arrangement that I had with Mr. Kinch, that if he would reduce his plan to writing and bring it in to me before anything was done with it, we would have a discussion on it.

Instead of doing that, Mr. Kinch started to circulating petitions around the plant which was going around on company time, which was against the rules.

Q. Against what rules?

A. Against office rules.

Q. Were there ever any such rules posted?

A. No, sir.

Q. How did the rules get known to the employees?

A. I think a man should know when he is hired to do a job he is supposed to do the job and not do anything other than that on company time.

Q. I will ask you again how was Mr. Kinch or any other employee of the company to know that it was against the rules of the company to circulate a petition on company time?

A. We didn't hire him for that purpose.

Q. Was there any way he would know it was the rule of the company not to circulate petitions on company time?

A. I think his good judgment should tell him that.

Q. Was there any way he would have of knowing?

A. I think when you hire a man for a job he ought to know that is the job he is supposed to do.

665 Q. Did you ever tell Mr. Kinch it was against the company's rules to circulate a petition on company time?

A. No.

Q. Do you know if any of your foremen or superintendents ever told him that?

A. No, I do not.

Q. Pardon?

A. I do not.

Q. You say there was no notice posted to that effect?

A. No.

Q. Are there any written rules distributed among the employees?

A. No.

Q. Or were there at that time?

A. No.

Q. Continue with your narrative about Mr. Kinch's activities. I interrupted you on the question of rules.

Mr. Lamfrom: What were the other reasons for Mr. Kinch's discharge?

Q. (By Mr. Rissman.) That is right.

A. Well, the circulating of the petition, and his continued activity pressing the question among the men, mostly when they were working on company time, and Mr. Kinch was in the time before he was required to be at the plant and he was interfering with men in the plant and in that way

666 interfering with our work.

Q. How was that interference brought to your attention?

A. Through the superintendent.

Q. Mr. Green?

A. Yes, sir.

Q. What were the reports Mr. Green made to you with reference to that interference?

A. Well, that he had been talking to various men on machines in the morning while they were supposed to be working, and his hours had not begun.

Q. Did Mr. Green report that Mr. Kinch's talking to the men interfered with the performance of their duties?

A. Yes.

Q. When did Mr. Green first make such a report to you, Mr. Falk?

A. I don't remember.

Q. Was it before or after the proposal was submitted to the Works Council?

A. I think after.

Q. How long after?

A. I don't know.

Q. How long before the company's answer?

A. I don't know.

Q. How long before the date of his discharge?

A. Oh, I would say a month or two.

667 Q. Why did you wait a month or two before talking to Mr. Kinch about it or taking any action with reference to it?

A. Mr. Kinch was talked to by men in the plant, not by me.

Q. When you say "the men in the plant," whom do you mean, Mr. Falk?

A. I mean Mr. Green, the foremen and others responsible.

Q. Do you know what they told him?

A. No, I do not.

Q. Do you know if they ever warned him against his conduct?

A. They told me they did.

Q. The matter they told him about specifically were what, if you know?

A. That I don't recall.

Q. Were there any other reasons for Mr. Kinch's discharge?

A. No.

Q. Can you recall anything further you said to Mr. Kinch on December 31, 1936?

A. No.

Q. Prior to the time that Mr. Kinch engaged in these activities, prior to the time he submitted the reclassification proposal to you, and sought the signatures of his fellow workers for approval of such reclassification, what kind of an employee was Mr. Kinch in the eyes of the company?

A. He was a fair worker.

Q. Had you ever had occasion to talk to Mr. Kinch 668 about his conduct in the plant?

A. Not to my knowledge.

Q. Do you know of any other supervisory officials of the company inferior in position to you that talked to him about his conduct in the plant?

A. I do not.

Q. Do you know Mr. Kinch's record as a workman with reference to the quality of his work?

A. I have been advised by the men in charge that he was a fair worker.

Q. Do you know that Mr. Kinch was employed steadily throughout the depression at your plant?

A. Yes.

Q. And that when other employees were laid off because of the lack of work Mr. Kinch was kept on because he was such a good worker?

A. I am not sure about that, I don't know.

Q. Well, do you know he was kept on?

A. Well, I haven't knowledge that he worked every day, that I don't know.

Q. During the time that Mr. Kinch was a member of the Works Council, did you have any conversations with him regarding his activities as a member of the Works Council?

A. I don't recall.

Q. Do you know how Mr. Kinch happened to be elected
669 to the office of representative on the Works Council?

A. No.

Q. Do you know that he was solicited for that office by his foreman and by Mr. Hydar, your personnel director?

A. No.

Q. Didn't Mr. Hydar or any other employer representative of the Works Council ever speak to you about Mr. Kinch?

A. Not that I recall.

Q. Aside from the meetings of the Works Council, did you know in any way of the activities of Mr. Kinch as a representative of the Works Council?

A. I am sure of these activities of course, they came to my attention because I discussed them in the office.

Q. In addition to these, Mr. Falk.

A. No.

Q. Do you know, or can you tell us about the time Mr. Kinch spoke to you with reference to overtime pay for workers, the question that he took up with the Works Council and then was referred to you?

A. I don't recall that conversation.

Q. Do you recall any conversations or meetings with Mr. Kinch during the time he was a member of the Works Council where you and Mr. Kinch discussed matters relating to the working conditions of employees?

A. Other than the meeting I have referred to?

670 Q. Other than these.

A. No, I don't.

Q. Do you know of any reason why at the present time The Falk Corporation could not rehire Mr. Kinch?

A. Yes, I do.

Q. What are those reasons?

A. I think Mr. Kinch is a very decided disturber.

Q. What do you mean by "disturber"?

A. Well, going around among the men and circulating a lot of stories, and doing a lot of talk that creates a lot of unrest.

Q. Have you in mind any stories that he had circulated?

A. What I have told you, yes.

Q. What you have told us?

A. Then he was constantly talking about the earnings of the company and earnings of the individual men and prying into the affairs of the company to an extent that we believed did not do our morale any good in the factory.

Q. And to what extent or in what manner did he pry into the affairs of the company?

A. Well, that is pretty hard for me to answer.

Q. Were those some of the reasons for his discharge?

A. They were some of them, yes.

Q. Have you anything specifically in mind, any specific instance of where he pried into the affairs of the company?

671 A. I was given that information by the foremen and superintendents in the plant.

Q. Had the foremen and superintendents ever reported to you or did you ever know of your own knowledge that when Mr. Kinch spoke of the affairs of the company he made any mis-statements of fact with reference to the earnings or business or things of that sort?

A. I don't know, he didn't make them to me.

Q. Had it ever been reported to you the statements that he did make?

A. Yes, they were reported.

Q. And did those reports, Mr. Falk, indicate that Mr. Kinch was speaking truthfully about the affairs of the company?

A. No.

Q. Did they indicate he was speaking mistakingly?

A. Yes, sir.

Q. Now, did you ever talk to Mr. Kinch about those activities?

A. No.

Q. Do you know if any other supervisory officials in a lesser position than yours spoke to him?

A. No, I do not.

Q. And do you know whether or not in these disturbing activities that you said Mr. Kinch engaged in, he was engaging those activities for himself or in behalf of his fellow

672 workers?

A. I have no way to know that, Mr. Rissman.

Q. Do you know whether the result he sought to obtain and did obtain, if any, were of benefit to himself personally or were of benefit to his fellow workers?

A. I don't know.

Q. Do you know if this reclassification proposal that he submitted to you would have benefited him personally or would have benefited a great number of workers in the plant?

A. I never stopped to analyze it to the extent whether it benefited him personally.

Q. Then would you say it would benefit a number of workers in the plant?

A. I can't see how it could.

Q. Do you think he felt it would benefit a number of workers in the plant?

A. He may have, I don't know.

Q. Did you at any time during your discussion with Mr. Kinch or knowledge of his activities with reference to the proposal, ever question his motive in making such a proposal, whether or not he sought personal gain or whether or not he simply figured that what he was doing was for the benefit of the workers?

A. I did not question him but he told me a number of times he was not interested himself at all; he was only interested in the other people.

673

Q. Did you have any occasion to doubt that as your belief, based upon his activities and what you know and saw?

A. Well, ordinarily human beings are not quite as charitable as that, as a rule.

Q. We are talking now about this particular case.

A. Yes, I do.

Q. You believed he was sincere?

A. No, I did not understand the question.

Q. That is what I mean, did you believe he was sincere in what he stated to you was the purpose of his activity?

A. No.

Q. You believed he sought personal gain?

A. I did.

Q. How could Mr. Kinch gain personally, assuming that the company had adopted his suggestion—had adopted his suggested proposal?

A. I suppose by getting into the classification that would bring the highest rate.

Q. Do you know what Mr. Kinch's rate was with reference to the other workers doing the same type of work?

A. No, I don't.

Q. Do you know whether it was higher or lower?

A. No.

Q. Do you think it was—was it necessary for him, Mr.
674 Kinch, if he sought personal gain or personal adjustment of his rate, to establish an elaborate reclassification coving a number of employees?

A. No.

Q. If he had any particular grievance as to his rate, he could have had that adjusted, could he not?

A. Yes, sir.

Q. If it warranted adjustment.

A. Yes.

Q. Aside from Mr. Kinch's disturbing influences, do you know of any reason why he could not be re-employed by the Falk Manufacturing Corporation at the present time?

A. Except that I think it would be a very disturbing factor if Mr. Kinch were in the plant again.

Q. Assuming now that Mr. Kinch has been cleansed now of his disturbing influences—

A. Pardon, I didn't get that.

Q. Assuming that Mr. Kinch has been cleansed of his disturbing tendencies and influences, do you think his ability as a worker would entitle him to re-employment in your plant?

A. I said he was a fair worker, he does his job fairly well.

Q. The only reason you feel he should not be employed is because of his activities as demonstrated by this reclassification proposal and prying into the affairs of the company.

675 A. I guess that is about right.

Q. Has the company found it necessary within the past three or four years to rid itself of any other disturbers there, men with disturbing influences?

A. We had one case where we let three men go.

Q. When was that, Mr. Falk?

A. I don't remember the date; it was on a Saturday morning, I remember that.

Q. Recently, or some time ago?

A. Some months ago.

Q. Are those the three men who were reinstated after a conference between the Regional Director and Mr. Lamfrom?

A. That is right.

Q. Have those men ceased their disturbing activities?

A. So far as I know, yes.

Q. They are conducting themselves as proper Falk employees should conduct themselves?

A. I think so.

Q. And why do you believe that if Mr. Kinch were reinstated he could not readjust himself as these three men did?

A. That is a pretty difficult question, I just have that opinion.

Q. Is it because, if I may state your opinion, you feel that Mr. Kinch is an influentional man among the workers and is recognized by them as a person who is able to advise them
676 and lead them in matters of adjustment, and other matters?

A. No, I wouldn't say that.

Q. Is it because Mr. Kinch has an inquiring mind into the earnings and affairs of the company?

A. No.

Q. Is it because Mr. Kinch has, as he has demonstrated, the abilify to suggest and propose certain reclassification of earnings of the men?

A. No.

Q. Then just what is it?

A. I think it is his personality, if you want my opinion of it.

Q. What are the dominating factors in his personality that would disqualify him for employment by your company?

A. I can't describe that.

Q. Do you know what department of the plant Mr. Kinch represented during his tenure of office on the Works Council?

A. He worked in No. 3 Shop which is our Erecting Shop and I think he represented that group over there.

Q. About how many men did he represent?

A. Oh, I can't answer that, I don't know.

Q. Do you know if there was an election following Mr. Kinch's discharge for a new representative on the Works Council?

A. No, I don't know.

677 Q. Can you not say then, Mr. Falk, that the prime reason for Mr. Kinch's discharge, for the necessity of the company's severance of his duties with the company, was, first, his activity in presenting this reclassification proposal, and secondly what you term his prying into the affairs of the company?

A. No, the proposal had nothing to do with that.

Q. Was it in connection with his attempt to get signatures on the petition for approval of the proposal that led to his discharge?

A. Part of it.

Q. And the other part?

A. His constantly going among the men when they were on duty.

Q. Do you know what he was going among the men for?

A. Except what I was told.

Q. What were you told he was going among the men for?

A. Trying to get their signatures to this proposal and disturbing them at their work.

Q. That is what I mean. The only reason then for his discharge was his attempt to get signatures from men during their working hours in approval of his plan?

A. And in addition the fact he did not live up to the original agreement with me that he would come back to my office when he had his plan reduced to writing.

678 Q. Was it necessary for a Works Council representative to take up with the employer matters that representative thought should be taken up with the Works Council?

A. No, it was not.

Q. Wouldn't that in itself, that system of requiring consultation and conference with you defeat the purposes of the Works Council, as to its purpose to act as a collective bargaining agency?

A. I don't think so.

Q. Do you feel that before taking matters up collectively an employee representing a number of employees in your plant should submit such proposal to you for approval or clarification?

A. Not normally, but when a man makes a statement—when a man makes an agreement with me, I expect him to live up to it.

Q. How did he happen to come to you in the first place with this proposal?

A. I don't recall, I may have asked him to come. He probably can tell you more about that than I can.

Q. (By Mr. Lamfrom.) Mr. Kinch said to you that he would come back to you with the proposal?

A. My original proposition to Mr. Kinch was that when he had reduced the plan to writing, I would like to have him come back and sit down and discuss it with him, which 679 he agreed to.

Q. And he said he would.

A. He did.

Q. And he did not.

A. He did not.

Q. (By Trial Examiner Batten.) Do you mean that at no time did he discuss with you the written proposal?

A. Not until it came before the Works Council.

Q. In other words, until it was presented to the Works Council he had never discussed the written proposal with you?

A. Not the written proposal, no, sir.

Q. (By Mr. Rissman.) Prior to the time Mr. Kinch came to your office, either on his own initiative or your invitation, did you know he had in mind any reclassification proposal?

A. No.

Q. Didn't you know that prior to that time he had spoke of such a proposal at a Works Council meeting?

A. No.

Q. Didn't you know that he was attempting to get the consensus of opinion of the employees with reference to such a reclassification?

A. Where, at the Works Council meeting?

Q. At the Works Council meeting and in the shop.

A. I knew about it, in the shop afterwards, yes.

Mr. Rissman: May I have the answer read?

680 (The answer was read.)

Q. (By Mr. Rissman.) You mean after he talked with you?

A. Yes.

Q. But prior to the time of your meeting with him, prior to the first meeting, did you know that he had taken up this proposal or discussed it with representatives on the Works Council?

A. Mr. Rissman, he had no proposal prior to the time that he discussed it with me in the office, because I asked him for it and he said he had not reduced it to writing.

Q. I don't mean a written proposal, I mean he had suggestions as to the reclassification.

A. They were very vague at the time he was in my office. The statement he made to me in my office was that if we would provide proper incentives our men could do 30 per cent more work, that was a general demand, and he had not reduced it to any plan at all at that time.

Q. And do you know whether he made any such statement, even vague statements as that to the representatives of the Works Council?

A. No, I do not.

Q. That had never been reported to you?

A. No.

Q. When did Mr. Kinch—when did Mr. Kinch's disturbing tendencies first become apparent?

681 A. Shortly after the meeting I had with him in the office, that was the first time it came to my attention; I don't remember the date of that.

Q. Do you recall that on the date you discharged Mr. Kinch on December 31, 1936, when you met him in your office or just outside the door of your office, you said to him "Mr. Kinch, what do you think of your proposal now?"

A. I may have said that, I don't recall.

Q. Do you recall that shortly after that statement or perhaps the next statement you told him you had decided it was for the interests of the company not to retain him any longer?

A. That is about right.

Q. Do you know what Mr. Kinch's earnings were when he worked for your company?

A. No, sir, I do not.

Q. Are you aware at the present time of some of his activities that you term "prying into the affairs of the company"?

A. I didn't get that.

Mr. Rissman: Will you read the question please.

(The question was read.)

A. At the present time, no.

Q. (By Mr. Rissman.) Are you aware of the fact that what you term "prying into the affairs of the company" was Mr. Kinch's attempt to obtain information regarding

682 earnings of the company and regarding the benefit to employes under certain government contracts that were being worked upon by the company?

A. Will you have that question read?

Mr. Rissman: Read the question.

(The question was read.)

A. Yes, I would say I was, that was about what I heard. If Mr. Kinch had wanted some authentic information, if he had come to me and asked me I would have given it to him.

Q. Did you ever tell that to Mr. Kinch?

A. I don't know that I did.

Q. Did you ever tell that to any of your employees?

A. Yes, a lot of them.

Q. Have any of your employees ever come to you for information concerning government contracts and what the contract provided should be the rate of pay to employees working on products under that contract?

A. We were paying the rates that the government contracts demanded.

Mr. Rissman: Will you read the question please.

(The question was read.)

The Witness: Not that I recall, not specifically.

Q. (By Mr. Rissman.) Have you at any time discussed with Mr. Kinch or any employees within the last two years, the details of any contracts, other than those employees
683 who of necessity must know the details?

A. I have discussed it with a great many at times.

Q. If Mr. Kinch had come to you for information on the earnings of the company and profits to be derived under certain government contracts, would you not consider that prying into the affairs of the company?

A. Not if he came to me, no.

Q. Was he prying into the affairs of the company if he seeks to obtain that information through unbiased sources, that is, from government agencies?

A. I don't know what that has got to do with the welfare of the people at the plant.

Q. Why would it be prying into the affairs of the company if he got it from an outside source and not be prying into the affairs of the corporation if he got it from you?

A. If we chose to tell him it would be our business.

Q. And if you did not choose to tell him then it would be prying into the affairs of the company?

A. I would say yes.

Q. Does not an employee have the right to obtain public information regarding the earnings and business of the corporation, just as an employee?

Mr. Lamfrom: You need not answer that, Mr. Falk. We will concede that.

Mr. Rissman: I want to know what Mr. Falk thinks.

684 Mr. Lamfrom: Well, we will concede it for The Falk Corporation.

Trial Examiner Batten: Well, I think counsel conceding that is sufficient.

Q. (By Mr. Rissman.) Did you feel that way and with that the decision had been made at the time of the discharge of Mr. Kinch?

A. What is that?

Q. That is, did you feel that was so at the time of the discharge of Mr. Kinch?

A. Then?

Q. Yes.
A. Yes.
Q. Then why was he discharged?
A. Why—
Q. Why was one of the reasons for his discharge the fact that he pried into the affairs of the corporation?
A. Because he was getting information that was not obtained, was not the right information.
Q. Did you know the source of his information?
A. No, I did not.
Q. Do you know what his information was?
A. I heard at various times, yes, something about it.
Q. Do you recall anything now of the information he received that was not the fact?
685 A. No, I don't.
Q. Do you think you would be able to refresh your recollection with reference to that by reviewing some of the records or by discussing it with some of your officers?
A. I might, most of my information came from Mr. Green, the superintendent.
Q. Will you do that for us, Mr. Falk, and when you are advised by Mr. Green or somebody else of the erroneous information Mr. Kinch had, will you please tell us?
A. I will be glad to do it.
Q. Do you know that during the time Mr. Kinch was a member of the Works Council he constantly and repeatedly objected to the main order of business of the Works Council, namely, reports of how much milk there was in the canteen and how many candy bars they had left at the end of the week?
686 Mr. Lamfrom: Just a minute, I object to that question, if your Honor please. It is one of the smooth, tricky propositions that has no merit back of it. I don't think it is a fair question.
Mr. Rissman: If it were a fact and Mr. Falk knows it he can say so.
Trial Examiner Batten: I don't believe that the attitude of Mr. Kinch or the corporation with respect to reports on matters of that kind are material to the issue in this case. However, if counsel desires he may enlighten the Examiner as to that.
Mr. Rissman: I will, this may not be a part of the record.
Mr. Lamfrom: Why not put it in, let's get some of your thoughts.

Mr. Rissman: It is the theory of the Board and it is also the fact that the Works Council was established by The Falk Corporation in 1933, to prevent the organization of The Falk Corporation into legitimate labor unions, and The Falk Corporation prior to 1933 never dealt with labor organizations, but when Section 7(a) of the N. I. R. A. came into effect they saw such a possibility and inaugurated their hand-picked employees and established the Works Council. To prevent the employees from using the Works Council as an effective
687 vehicle for collective bargaining the main business taken up by the Works Council was how many bottles of milk there were in the canteen, whether or not the cuspidors were clean, how many chocolate bars there were and what the price of the chocolate bars should be.

Mr. Lamfrom: Just a minute. This is at least a quasi-court; you haven't the right to go about castigating everybody in the United States with your crazy theories.

Let's get down to business.

Trial Examiner Batten: Now, just a moment, gentlemen. Mr. Rissman, granting that what you have said is true, what effect has that on the issues in this case? In other words, that the Works Council did everything except the thing it was supposed to do, if you show the Works Council did nothing in any way carrying on collective bargaining arrangements with The Falk Corporation, and that it was organized at the instigation and suggestion of the corporation, doesn't that show the same thing?

Mr. Rissman: Except I am not concerned now about the effectiveness of the Works Council, but I am trying to show in connection with the discharge of Mr. Kinch, that the moment he raised his voice to object to the ineffectivenes of the Works Council, the moment he raised his voice in the presentation of the plan that he felt was for the advantage and benefit of his fellow workers, the moment he did anything of that nature, he certainly became a disturber, he
688 certainly became a poor employee for the corporation and was discharged.

Trial Examiner Batten: Mr. Rissman, I will sustain the objection to that question, and you may proceed to show what you just stated, that I consider to be material?

Mr. Rissman: All right.

Mr. Lamfrom: Now, I move, if the Examiner please, that the remarks of counsel which indicated his theory, which it

seems the one he has about everything, be expunged from the record as being incompetent and immaterial and self-serving—

Mr. Rissman: If the Examiner please,—

Mr. Lamfrom: Now, just a minute, I haven't finished.

Mr. Rissman: Go ahead and finish.

Mr. Lamfrom: And not conducive to the establishment of justice.

It can do no good to have him stand up here and give his economic theories about the Works Council and all of that sort of thing, when the only thing we are trying here is the question of whether or not The Falk Corporation has been guilty of specified unfair labor practices.

Mr. Rissman: If the Examiner please, I offered to have my remarks off the record and Mr. Lamfrom insisted that they be on the record.

Now, that they don't suit his purpose, and seem to put the company and his case in a bad light, he asks that they
689 be expunged.

Mr. Lamfrom: I move that remark be expunged from the record. That is not lawyer-like.

Trial Examiner Batten: In order to end this situation, the Trial Examiner has ruled that the question is not material, and as far as the remarks of counsel are concerned the Trial Examiner suggested that they be not on the record and was willing to listen, and I think counsel for the respondent suggested that it was just as well they be on the record.

Now, the remarks may be stricken, but they will remain in the record; I mean they will not be expunged from the record. I don't consider them material, but you may proceed.

Q. (By Mr. Rissman.) Mr. Falk, do you know that Mr. Kinch was in constant disagreement with other representatives of the Works Council regarding the matters and business taken up at the Works Council?

A. No, I do not.

Q. Wasn't it ever reported to you that he disfavored the activities of the Works Council, stating that they were not matters of collective bargaining in the interest of the employees?

A. I don't remember that it was.

Q. Had you ever heard that from any other Works Council members?

A. No.

690 Q. Or anybody else in the company?

A. No.

Q. Do you know, Mr. Falk, what the constant and often recurring business of the Works Council was?

A. No, I do not.

Q. Do you recall that the first item of business as reported to you in the meetings of the Works Council from the time of its—from the time shortly after its organization until the time of its demise, was an accounting of the business of the canteen for each month?

A. No, I don't.

Q. Do you know that the business of the Works Council was to take care of the canteen of the company?

A. I thought it was.

Q. Do you know that one of the main orders of business after getting the report of the business of the canteen, was to appoint a committee to investigate the canteen and check up on its inventory for the following week or following month?

A. No, I don't.

Q. Did you ever read the minutes of the Works Council?

A. Once in a great while I did, I never went through them very carefully.

Q. Prior to the establishment of the Works Council was there a canteen in the factory?

691 A. I don't remember.

Q. Is there a canteen there now?

A. Yes.

Q. Who operates it?

A. I think a Christmas Club, so-called.

Q. Does the Independent Union have anything to do with the operation of the canteen?

A. I don't know.

Mr. Rissman: Pardon me, just a minute, Mr. Examiner.

Trial Examiner Batten: We will recess for a few minutes.

(A short recess was taken.)

Trial Examiner Batten: I believe we will proceed, gentlemen.

Q. (By Mr. Rissman) Mr. Falk, can you tell us the location of the powerhouse with reference to the rest of the plant?

A. Well, it is south of the largest group of buildings and a little bit west of what we call No. 3 shop.

Q. Is it a separate building by itself?
A. A separate building.
Q. And employees how many people?
A. 15.
Q. What are the occupations of some of those 15?
A. Firemen, oilers and engineers.
Q. When these firemen, oilers and engineers report for work do they report direct to the powerhouse or punch
692 in at some other place?
A. I don't know where they punch in.
Q. In the opinion of the company could the purposes of the powerhouse employees for collective bargaining best be accomplished together with representation of all the workers at the plant or by separate representation for those employees?
A. I think they can be served as well one way as the other.
Q. If the National Labor Relations Board should find as a result of these proceedings that the workers in the powerhouse are entitled to a bargaining unit of their own composed entirely of powerhouse employees could the company effectively deal with such a bargaining unit?
A. Yes.
Q. Are there any clerical employees in the powerhouse?
A. No.
Q. And the only type of workers there are, are those you have mentioned, firemen, oilers and engineers?
A. That is right.
Q. Are there any other activities in the powerhouse except the necessary equipment and machinery to operate the powerhouse?
A. No, nothing but the maintenance of the machinery, that is all.
Q. Is there a separate maintenance man for the powerhouse?
A. No, sometimes the boys in the plant do their own
693 maintenance and sometimes other fellows from another plant.
Q. So that if there is any maintenance work to be done the powerhouse gets some of their maintenance men from the main building?
A. Sometimes.
Mr. Rissman: No further questions.
Mr. Lamfrom: We will reserve cross examination of Mr.

Falk until we put in our defense, so that will shorten the matter quite materially.

Trial Examiner Batten: Mr. Goldberg.

Cross Examination.

Q. (By Mr. Goldberg) Mr. Falk, you did not check your employment records in order to ascertain whether there were 15 men working in the powerhouse, did you?

A. Yes, I know there are 15 men in the power plant.

Q. Well, that does not seem to agree with the statement that I have that there are 17, including the chief engineer. Have you included the chief engineer?

A. I think perhaps, Mr. Goldberg, you have included two derrick operators in that figure, steam derrick operators.

Q. Are they employed in the power plant?

A. No, they are not.

Q. I see. Now, what is the nature of their work?

A. They are steam derrick operators.

Q. They operate steam-driven machinery, do they not, 694 or power-driven machinery?

A. Steam derricks, yes.

Q. Do you know whether they are affiliated with any labor organization?

A. No.

Q. Did Mr. Kingsland represent that they were members of his union when he conferred with you?

A. He didn't say that; he said the powerhouse, he said he had 17 out of 19, or something like that, as I recall his statement.

Q. Well, to refresh your recollection didn't he tell you that there were 14 out of 17 had signed up with his union?

A. He said 17 out of 19 as I recall it.

Q. Well, you may be mistaken on that. You did not make any notes at the time?

A. I did not make any notes, but that figure registered pretty definitely with me because it was in error with the number of people we had in the power plant, I happened to know that.

Q. That is your best impression?

A. That is my best impression, very definitely.

Q. The men in the powerhouse perform work that is distinctly different from the rest of your employees, isn't that true?

A. I think that is right.

695 Q. And the only two other employees in the entire organization, that is, in your plant, are these two steam-driven derrick operators whose work might be compared with those in the powerhouse, isn't that true?

A. Yes, that is right.

Q. They do a type of work which is similar to the work being performed in the powerhouse, these two men do?

A. Well, yes, one is mobile, and the other is stationary, that is the difference.

Q. Do you happen to know the scale of wages for the men employed in the powerhouse?

A. I cannot recite it to you, Mr. Goldberg.

Q. Is it hourly or weekly pay?

A. Monthly.

Q. Monthly pay?

A. Yes.

Q. You don't know their schedule of hours?

A. Schedule of hours, yes, about 48 hours a week.

Q. 48. Is that a six-day week?

A. Yes, I think so.

Q. Now, on this question of bargaining, isn't it your idea that bargaining can be carried on effectively by either craft units or plant units, depending largely on the type of leadership among the men and also among the unit and among the company—the various companies to be dealt with;

696 isn't that true?

A. That is a little involved question. You are getting in there the distinction between one and the other, with leadership modifying one and the other.

My personal opinion is it does not make much difference one way or the other.

Q. Yes, I am in agreement with you, it really depends on the leadership rather than the unit.

You can effectively bargain with a small group, a craft unit, or with an entire plant unit, depending on whether there is effective leadership at the head of the unit designated, isn't that true?

A. I think that is substantially right.

Q. Now, you have spoken to the men working in the power plant concerning their joining or refraining from joining labor organizations; isn't that true?

A. No, I have spoken to them about labor organizations but not refraining from joining at all.

Q. Well, you have spoken in your office to the various employees at the power plant?

A. That is right.

Q. Concerning unions, have you not?

A. That is right.

Q. And you spoke to these various employees, one at a time in your office; isn't that true?

697 A. Sometimes one at a time and sometimes there were three or four in there.

Q. And that was subsequent to the conversation you had with Mr. Kingsland?

A. That is right.

Q. You called these men in to your office for that purpose?

A. I did.

Q. When did you call the first one of them into the office?

A. I don't remember that?

Q. I beg your pardon?

A. I don't remember that.

Q. Was it the same day that Mr. Kingsland was there?

A. I don't remember now.

Q. With reference to the time he called on you was it the following day or several days later?

A. I don't know.

Q. However, you did call the men after you had spoken to Mr. Kingsland?

A. That is right.

Q. Do you know the first one you called in?

A. No.

Q. You don't know who that was?

A. No.

Q. Did you talk to the supervisor over the men in the powerhouse before you called any men in?

698 A. I may have.

Q. What is his name?

A. Meyer.

Q. What was the nature of the conversation with Mr. Meyer concerning that subject?

A. I don't recall it.

Q. Where did you talk to him concerning the subject?

A. I don't remember.

Q. Do you know when you talked to him?

A. No.

Q. Was it the same day that Mr. Kingsland was there?

A. I don't know.

Q. Well, it must have been concerning the joining or refraining from joining the union, isn't that true?

A. That discussion with him was about the organization, yes, sir.

Q. What was his opinion, did he express any opinion?

A. I don't know, I don't think he has any particular opinion one way or the other.

Q. Did he tell you that?

A. I don't remember.

Q. Well, what was—don't you have any inkling of the things said by you or him?

A. No.

Q. At that time?

699. A. No.

Q. That was only a few months ago, wasn't it?

A. I guess so.

Q. Had you had many conversations with Mr. Meyer concerning the unionization of the powerhouse?

A. Not so many, no.

Q. Do you recall any of them?

A. No.

Q. Were any conversations had between Mr. Meyer and you concerning the unionization of the power plant prior to the time Mr. Kingsland came to you?

A. Yes, I think there were.

Q. When was the first one?

A. I haven't any idea.

Q. Was it prior to the time that you learned of the fact that your operating engineers were attempting to unionize your powerhouse?

A. I don't know.

Q. When did you first learn of the fact that the operating engineers, Local 311, were organizing your men working at the power plant?

A. The day Mr. Kingsland came into the plant.

Q. You never had any inkling before that date?

A. No.

Q. Even though men signed up as early as February 1937?

700. A. No, I knew nothing about that.

Q. When you called these men in the office did you ask them questions or did you do the talking and have them do the listening?

A. We just talked between ourselves, as I did with my group of three or four men.

Q. Did you ask the same questions with each of them?

A. I talked sometimes to four of them at a time and sometimes one.

Q. You canvassed the entire powerhouse?

A. No.

Q. Were there any men that were not spoken to by you?

A. I don't remember.

Q. What was your plan in calling these men in?

A. All I wanted to find out was whether these men were much intimidated when I talked to them, as I was accused of having intimidated them when I talked with them. I just wanted to find out how many of them I had threatened or coerced or intimidated by asking them to come into the office and talk with me about it.

Q. You called the men in?

A. Yes, I called them in.

Q. In order to find out whether they had been coerced?

A. Yes.

Q. As you had been accused of coercing them?

701 A. Yes, sir.

Q. Who accused you of coercing them?

A. I think you did.

Q. I accused you?

A. Yes.

Q. After we had the conference at Mr. Lamfrom's office you called them in?

A. Yes, sir.

Q. After we had the conference at Mr. Lamfrom's office you then stated you had called certain individuals of the powerhouse into your office and talked to them as to whether they wanted to be represented by the Operating Engineers or not.

A. Right.

Q. Isn't that true?

A. Right.

Q. Let's take back what occurred prior to the time that I spoke to you in Mr. Lamfrom's office.

Now, with that in mind, why did you call the men in between the time that Mr. Kingsland spoke to you at your office and the time I spoke to you in Mr. Lamfrom's office?

A. I don't think I called them in at that time. It was after the time I had met with you in Mr. Lamfrom's office.

Q. Well, you stated to me in the presence of Mr. Lamfrom and in the presence of Mr. Kingsland, did you not, that you had called the men in your office and spoken to them
702 about their joining the Operating Engineers?

A. I don't think I did; I didn't call them in before that time, I called them in after the meeting in Mr. Lamfrom's office, I know.

Q. Why did I accuse you, what was the purpose of that, your idea of that?

A. How would I know?

Q. Well, I made the statement did I not, that by calling the men into your office, these men working in the power-house, and talking to them one at a time about joining or refraining to join the Operating Engineers, that you were coercing the men, and isn't it a fact that you volunteered the statement that you had spoken to these men?

A. That is right.

Q. In your office, isn't that right?

A. Yes, sir, right.

Q. Now again, I ask you what was your purpose in speaking to them at that time, prior to the time that we had the conversation in Mr. Lamfrom's office?

A. I wanted to find out how many wanted to go along with this union.

Q. Did you feel that you had the right to call these men into your office and ask them individually whether they wanted to join the Operating Engineers?

A. I didn't say I asked them individually; I talked
703 to them sometimes individually, and sometimes in groups of two or three, and I figured I had that right.

Q. Did you feel you had the right to call them in individually or in small groups?

A. Yes, sir.

Q. You called in practically everyone of the employees in the power plant and asked them whether they wanted the Operating Engineers, Local 311, to represent them; isn't that true?

A. Yes, that is right.

Q. And pursuant to that understanding of your right you did talk to a goodly number of your employees in the power-house?

A. That is right.

Q. Now, that was after Mr. Kingsland had been to see you, wasn't that true?

A. I think so.

Q. Now, what was the nature of your conversation with these individuals on those occasions?

A. Well, the nature of it was just simply an effort on my part to find out whether these fellows wanted to join the union.

Q. You did not put any question of vote to them, did you?

A. Not that I recall.

Q. Did you tell me and Mr. Kingsland you were going to call the men in?

704 A. I don't think so; maybe I did.

Q. Was the foreman present when you called them in?

A. No.

Q. Well, just exactly how did you go about inquiring whether they wanted the International Union of Operating Engineers, Local 311, to represent them?

A. Well, I told them substantially of the meeting with Mr. Kingsland and what he asked, and I said, "If that is their desire I would just like to know it because I did not want to make any arrangements that some of them didn't agree with."

Q. Did you express your opinion on unionization one way or the other on these occasions?

A. I don't know, I may have.

Q. You may have expressed your opinion?

A. Yes.

Q. Of course your opinion is unfavorable to union organization?

A. That is right.

Q. And it was unfavorable to Local 311?

A. That is right.

Q. Did you make any suggestion to the men?

A. I don't think so.

Q. May you have?

A. I don't know.

Q. And when you say you don't know, is it possible 705 in some instances you may have and in others you may not have?

A. I said I don't remember.

Q. (By Mr. Lamfrom.) Were these conversations you had with the men after the postal cards had been sent out by the union?

A. Some of them were and some of them were before.

Q. (By Mr. Goldberg.) Then you had this conference

at Mr. Lamfrom's office and after that conference you again talked to the men, did you not?

A I talked to some of them, yes, sir.

Q. Did you call in each and everyone of those whom you had spoken to prior to the time that you had the conference in Mr. Lamfrom's office?

A. No, I don't think so.

Q. Now, these employees in the powerhouse had been working for you for a long period of time, had they not?

A. That is right.

Q. And you knew those men and know they are family men and something about their mode of living, do you not?

A. Yes, I know them pretty well.

Q. You come in contact with them quite often?

A. Well, it is a big shop, once in a while you go a long time and don't see a certain group and then again you may see, if occasion takes me over there for some particular purpose, we have a repair, I might be over there two or three days a week and then not go back in a month.

706 Q. You feel those men think highly of you, do you not?

A. I hope they do.

Q. You also think they would like to please you and do your bidding if they can, isn't that right?

A. I think that is probably right.

Q. And in speaking to them, don't you think that if you let it drop that you were opposed to the Internatinoal Union of Operating Engineers, Local 311, that at least a good number of them might go along with your way of thinking?

A. No.

Q. You don't think so?

A. No.

Q. Why don't you feel that way?

A. Because I think those fellows know their own minds, they know what they want to do.

I can't understand why you called these men into your office and talked to them if they knew their own minds?

A. I did not want to sign any agreement for some of them who did not want to go along with the union. Why should I do that?

Q. If they knew their own minds, did you think it was necessary to let them know, at least some of them, that you were opposed to Local 311?

A. I didn't tell them I was opposed to Local 311.

Q. Well, you indicated you were opposed to labor
707 unions and Local 311 is a labor union?
A. I said "unions."
Q. Now, what was your purpose in calling the men back after our conference at Mr. Lamfrom's office, if you knew these various individuals, and you were able to size them up, why did you call them back in your office then?
A. Because I had only talked to a few and I wanted to talk to a few more.
Q. Did you call back the same ones that you had had in on other occasions?
A. I don't know whether I did, I don't think I did; in fact I didn't talk to all of them anyway.
Q. You are not sure on some of these things?
A. Not exactly, no.
Q. Is there any significance that you can point out, that of the 14 men who had signed applications to the A. F. of L., that all but two have since made requests to withdraw their applications or have discontinued their affiliation?
A. No, I can't say, I don't know what it is.
Q. You don't think your conversations had anything to do with it?
A. No, I don't.
Q. You don't think your letter had anything to do with it?
A. No, I don't.
Mr. Goldberg: May I see that exhibit, please?
708 Trial Examiner Batten: Yes.
Q. (By Mr. Goldberg.) In the past had you sent mail to the men working in the powerhouse on various occasions?
A. Not very often.
Q. As a matter of fact it is not the rule to send communications to your employees in the powerhouse, is it?
A. If I have something to communicate to the powerhouse I usually communicate with the chief engineer.
Q. Sure. However, you saw fit to send a written communication on April 16th, 1937 to the employees of the powerhouse?
A. Yes.
Q. Did you not?
A. That is right.
Q. Did you mail it to each individual's home?
A. No.
Q. How did you send it?
A. Delivered to the men at the powerhouse.

Q. You delivered it to each man in the powerhouse?
A. Yes.
Q. Now, you don't know whether any men in the powerhouse received the postal card or not, stating that Mr. Kingsland had had a satisfactory interview with you, do you?
A. No, I don't.
Q. You did not know that at that time?
A. No.
709 Q. You had not canvassed your employees?
A. No.
Q. The only way you knew that a card had been sent was due to the fact that a card was brought to you one morning by one of the men, isn't that true, and at the present time the only man that you knew who brought a card to you is Mr.—
A. Trebetosky.
Q. Mr. Trebetosky; isn't that true?
A. That is right.
Q. Have you since refreshed your recollection and do you know of any other cards?
A. No.
Q. How come you didn't call the men in the office on that occasion instead of distributing this letter of April the 16th?
A. Just because I chose to write a letter instead of calling them in.
Q. Now, if you were discussing with someone whom you thought very highly of, someone whose bidding you would like to do, and that certain somebody thought of joining a club or fraternal organization, and if you were handed by that certain individual a statement "I am not in favor of blank club," wouldn't you be inclined not to join that club if you still wanted to do his bidding?
Mr. Lamfrom: Of course that comparison there, Mr.
710 Goldberg, is not fair.
He says, "not in favor of a club, blank club or blank union."
State whether or not a union of employees—
Q. (By Mr. Goldberg.) All right, cut out "blank organization," and let's assume that this is a bridge club and insert there "You were in favor of the bridge club," wouldn't you be inclined not to join the bridge club after that if you still wanted to.
Mr. Engelhard: I submit, your Honor, that is not a proper question, what he learned or what his views may be on a matter of that sort. That does not prove the issue in this case.

Trial Examiner Batten: Well, the objection to the question to my mind is assuming that he wants to do the bidding of another.

Now, there is no evidence here that the employees wanted to do the bidding of the employer.

Mr. Goldberg: Well, if I may call your attention to the answers that have just been given, Mr. Examiner, I think the contrary is the case. The witness stated when I asked him whether the employees think highly of him, whether they would like to do his bidding, he stated all along the line, yes. I think you will find that in the record.

Trial Examiner Batten: I think he said that he hoped
711 the employees would think highly of him.

Mr. Goldberg: Yes.

Trial Examiner Batten: Now, I don't recall any such conversation—any such questions asked this witness, do the employees want to do your bidding.

Mr. Goldberg: Well, I think it is in there, but it is a hypothetical question and perhaps won't help us.

I agree the question be withdrawn, but I don't agree he didn't say it. That is something you can check the record on later, on the bidding.

Trial Examiner Batten: Don't put this in the record.

(Discussion off the record.)

Trial Examiner Batten: All right, proceed.

Q. (By Mr. Goldberg.) Did you call the employees in pursuant to No. 3 in this letter?

Mr. Engelhard: I didn't hear that question.

Q. (By Mr. Goldberg.) Which reads:

"We are ready at all times to meet with you as a group or individually to discuss your problems."

Was it your thought that you called these men in and discussed their problems?

A. No, I don't think I had any thought with reference to that paragraph at that particular moment.

Q. You were just here calling the men in to see whether my statement to you that you were coercing the men in
712 calling them in to your office was well-founded or not?

A. Yes, I wanted to recite to them the whole situation so that they would know what the whole situation was.

I recited the whole situation from my meeting with Mr. Kingsland in my office and the meeting in Mr. Lamfrom's office with you and Mr. Kingsland present, as I recall it, I recited the whole episode.

Q. What did you recite to them?
A. Just the questions of our meeting.
Q. Yes, tell us what that was.
A. My meeting with Mr. Kingsland and my discussion with him and my meeting with you.
Q. Did you make this statement to the men on these occasions when you called them in to your office:
"You know you don't have to join the union, you can depend upon me."
A. No, I don't recall such a statement.
Q. Well, something to that effect?
A. No.
Q. Something to the effect that "I have always treated you right and you know I will always continue to treat you right"?
A. No, not that I know of.
Q. Or the Falk Corporation is interested in your welfare, the welfare of its employees and "we will take care of you men"?
713 A. No.
Q. Did you say anything about "anything you can get by a labor organization you can get without paying dues to this organizer. The Falk Corporation is interested in you"?
A. I may have.
Q. Was anything said by either you or the men on the occasions of these meetings concerning the Independent Union in existence at the plant?
A. Not that I recall.
Q. Did you state to them "That anything that you want done through the labor organization or through the union, that can be done as well and better through the Independent Union"?
A. Not that I recall.
Q. You do recall however, something being said about the payment of dues to the union?
A. I don't recall it definitely; I say, I may have said it, I don't recall.
Q. Have you studied the wage scale of the operating engineers in the city of Milwaukee outside of your plant and compared it with the wages paid to the men in the powerhouse by your company?
A. We check wages every once in a while.
Q. What do you claim, are you higher or lower?

A. I think our scale is about as high as any.

Q. Well, comparing the union wage scale are you as
714 high as the union wage scale is?

A. I don't know what the union wage scale is.

Q. Do you pay one dollar to the men in the powerhouse?

A. We don't pay by the hour, we pay by the month.

Q. Well, you pay $48 a week?

A. Yes, I think we do.

Q. To all of the men in the powerhouse?

A. That I am not sure.

Q. The superintendent gets more?

A. Surely.

Q. Can you get your wage scale and have it for us here?

A. Yes, sir.

Q. Thank you. What did these men tell you when you called them in the office as to whether they were coerced on former occasions when you called them to the office?

A. I found—I haven't found anyone that said they were scared or coerced, threatened or anything else. They took that conversation just as we have always talked to them.

Q. Did any of them tell you they had since withdrawn from the union?

A. Some of them sent me a copy of a letter some days after they had sent it in, I guess, I guess four or five of them.

Q. Now, Mr. Falk, when you called these men in the office did you inquire whether they had joined the Operating Engineers or signed an application for membership?

715 A. No.

Q. You did not ask them that?

A. No.

Q. What did you ask them concerning whether they wanted the Operating Engineers to represent them?

A. That is right, Mr. Kingsland asked me to be their bargaining agent and I thought before acting as their agent for those fellows, I would like to know what they were thinking about.

Q. What they were what?

A. What they were thinking about.

Q. You called each one of the individuals to find out what they were thinking about?

A. No.

Q. Well, that is not quite clear to me. You called them in to ask whether they wanted Mr. Kingsland to represent them or not?

Mr. Engelhard. He didn't testify to that. He said Mr. Kingsland wanted Mr. Falk to be their bargaining agent.

Mr. Goldberg: Mr. Kingsland wanted Mr. Falk to be the bargaining agent?

Mr. Engelhard: Yes, sign a contract with the organization.

Mr. Goldberg: I don't think you mean just what you say.

716 Mr. Engelhard: Have the question and answer read back then.

Mr. Goldberg: You just stated that Mr. Kingsland wanted Mr. Falk—

Mr. Engelhard: I said Mr. Falk testified that Mr. Kingsland wanted Mr. Falk to be the bargaining agent for these employees; in other words, enter into a contract with Mr. Kingsland without compelling the men, and the postal card indicated Mr. Falk had already agreed to everything except one item, the hours.

Trial Examiner Batten: Will the reporter go back and read the previous questions and answers.

(The record was read.)

Trial Examiner Batten: The question is, did you call the men to ask them whether they wanted Mr. Kingsland to represent them, is that right?

The Witness: That is right.

Q. (By Mr. Goldberg) And in the course of the conversation did any of them tell you that they had signed applications for membership in the Operating Engineers Union?

A. I don't remember that.

Q. Do you know of a single one who told you that they had signed an application for membership?

A. Yes, I remember Ottman very well, because I had quite a discussion with Ottman about it, and he was a member 717 he said.

Q. What was the discussion you had with him, what was the conversation?

A. Oh, I don't remember, I talked with him for probably 15 or 20 minutes.

Q. Well, there was a lot said in 15 or 20 minutes, tell us something.

A. I don't remember it.

Q. Don't you remember a single thing that was said concerning labor unions?

A. No.

Q. (By Trial Examiner Batten) Mr. Falk, do you remember the general tenor of the conversation?

A. Yes, in a very general way.

Q. Well, tell us as you remember it, what the subject of discussion was?

A. Well, I, in talking with Ottman, like I talked with most other fellows, I tried to find out whether it was his desire to be a member of the A. F. of L. and have these fellows represent him.

He indicated that he was a member of the union, that his father had been a member of the union for a great many years.

As I recall the conversation, I told him, "That is all right, if that is what your choice is, that is fine, you have your
718 own choice."

We discussed things along that line for about ten or fifteen minutes. That is about the gist of the conversation.

Q. Did you indicate to that man that you were opposed to it, to the union?

A. No, I don't think I did.

Q. You did, however, to some of the other fellows?

A. I said I may have.

Q. Did you realize that there was a man that had made up his mind and there was no changing him?

A. Not at all.

Q. Did you talk to McCarthy?

A. Yes, I think I did.

Q. Do you recall when you talked to McCarthy?

A. Well, I talked to him one morning because he happens to be on the night shift and he goes out in the morning. I met him in the office in the morning. He comes over in my office very often.

Q. What was the nature of the conversation with McCarthy?

A. I don't remember that.

Q. Did you let McCarthy know that you were not favorable toward labor unions?

A. I don't remember it.

Q. Did McCarthy in the course of the conversation let you know that he had signed an application for membership
719 in this union?

A. I don't remember he did.

Q. Did you talk to William Getrig?
A. Sebrig—
Q. Severight, yes.
A. I don't remember that, I may have.
Q. Did you talk to M. Nessman?
A. I don't know.
Q. You may have and may not have?
A. That is right.
Q. Did you talk to Charles P. Chase?
A. Yes, sir.
Q. Did you mention to Charles Chase that you were not favorable towards unions?
A. I don't know.
Q. Did he in the course of the conversation tell you that he had signed an application for membership?
A. He did.
Q. In the International Union of Operating Engineers?
A. He did.
Q. How long did you talk to him?
A. Maybe 5 minutes or so.
Q. Did he tell you the reason why he had joined?
A. Yes, he gave them one dollar to get rid of them.
Q. If I told you he paid five dollars and not one dollar, 720 would that refresh your recollection? Did he tell you that it was five dollars he gave them?
A. As I recall it he told me one dollar.
Q. Did he tell you when he had signed up?
A. No.

Trial Examiner Batten: Mr. Goldberg, I do not want to restrict this examination in any way. However, I don't see where any of these questions are material, to this witness as to whether or not he told him he was a member of the union or when he signed or how much he paid.

However, I do think the material thing in this case from this witness is just what conversation took place between the witness and Mr. Chase at this meeting, and not whether he knows all of these facts. We are not as much interested in what he does not know as in what he does know, and it seems to me in each of these instances if you will ask the witness to relate what was said by Mr. Chase and what was said by himself at this meeting we will get all of the facts with respect to the meeting.

Mr. Goldberg: Yes, that is a good suggestion. I will follow that.

Q. (By Mr. Goldberg.) Now, do you remember what was said by either Charles Chase or yourself at this meeting?

A. No, I cannot remember the entire conversation. I think I can give you the substance of the conversation
721 that I had with most of the men, if that will serve your purpose.

Q. Well, do it if you will, please.

A. I simply in talking with these men tried to find out whether they desired to affiliate with the A. F. of L. or not. That was the purpose of my conversation with them.

I figured that if all the fellows in the powerhouse wanted to belong to the A. F. of L., as far as I was concerned, it was perfectly all right, and substantially I told them all that.

I said, "What I want to know is, do you fellows want me to sign up? Are you ready, all of you, to go along with this and handle this? I would like to find out how many of you are ready and how many are not."

That was substantially my conversation with all the men. The details of the conversation I don't remember.

Q. Did you know of any other individual other than these two you have mentioned who, in the course of these conversations, told you they had signed applications for the Operating Engineers?

A. No.

Q. Those are the only two you could think of?

A. That is all I can remember now.

Q. I will ask you whether you spoke to any of these men that I am going to call off, in addition to the ones you have already told us:
722 Jensen?

A. I don't remember that.

Q. William Brant?

A. I think I talked to William Brant.

Q. M. Trebetosky.

A. Yes, I talked to him.

Q. G. A. Atcherberg, George is the first name.

A. I don't know whether I talked with him.

Q. John Yankovich.

A. Yes, I talked with him.

Q. Lawrence Frank.

A. I think I talked to Frank.

Q. Carl Hergensade.

A. Hergenrider.

Q. Right.
A. I don't remember that.
Q. M. P. Garrity.
A. Yes, I think I talked to Garrity.
Q. Did Garrity tell you that he was an old union man?
A. I don't remember that.
Q. Did you talk to Schader?
A. Yes.
Q. Now, after you have heard these names I have just called off to you does that refresh your recollection as to any of them telling you whether they had joined the
723 Operating Engineers Union?
A. Except Schader, he always told us he belonged to the union; I knew he belonged to the union, he belonged to the union when he worked for Allis Chalmers.
Q. As a matter of fact he joined the union before he worked for you?
A. That is right.
Q. Now, did you know that some of these men asked that their applications be withdrawn?
A. They sent me a copy of a letter.
Q. They sent you copies?
A. Yes.
Q. Do you know who got out those letters?
A. I haven't any idea.
Q. They were not gotten out at your office?
A. I don't know anything about them.
Q. I will show you this letter and ask you whether the typing on it and that type of paper is used in your office?
A. I can't answer that, I am not an expert at that.
Mr. Clark: Let me see it. Maybe I can explain it.
I know some of these letters were written in our office and sent in our office. I don't know whether that is one or not.
Trial Examiner Batten: I presume the men themselves would know.
724 Mr. Goldberg: That is what we will do. I thought maybe we could get it from this witness, but I will subpoena in some of these people.
Mr. Engelhard: Don't subpoena them all at one time.
Mr. Goldberg: No, I think we will cooperate on that; we will let you know who we want.
Mr. Engelhard: Sure.
Mr. Goldberg: Mark this—

Trial Examiner Batten: What is that?

Mr. Rissman: Board's Exhibit 24 is the minutes of the Works Council.

Trial Examiner Batten: Yes, and the amended petition was marked Union's Exhibit 1.

Mr. Rissman: Yes, Local 311 Exhibit 1.

Mr. Goldberg: Local 311 Exhibit 1, and I will ask to have this marked as Local 311 Exhibit 2.

(Whereupon, the document above referred to, was marked Local 311 Exhibit No. 2 for identification.)

Mr. Engelhard: What was Local Exhibit 1?

Mr. Goldberg: The amended petition.

Trial Examiner Batten: That was the amended petition.

Mr. Engelhard: Oh, that was the amended petition.

Mr. Goldberg: Yes.

Mr. Rissman: Exhibit 2 is something else.

725 Q. (By Mr. Goldberg.) Mr. Falk, I show you Local 311 Exhibit No. 2 marked for identification, which is an application card for membership in the Independent Union. You have seen it before, have you not?

A. I don't know that I have.

Q. Do you know whether any of these were passed around on the premises of the company on company time?

A. I don't know.

Q. Has it been called to your attention if it had been?

A. They may have; I assume that probably they are.

Q. In these conversations with the individuals did you stress the fact that they can join a labor union or not, as they saw fit, under the Wagner Act?

A. I think I did, yes.

Q. Rather forcibly?

A. Well, I don't know how forcibly it impressed them. I tried to tell the man what his rights are and I tried to be fair about it.

Q. Did you talk to your lawyer before talking to these men as to a correct interpretation of the rights of the men or did you take it upon yourself?

A. No, I took it upon myself.

Q. In other words, when you make the statement that you advised them of their rights you advised them of their rights as you interpreted their rights to be?

726 A. That is right.

Q. Right?

A. That is right.

Mr. Goldberg: Mark this Local 311 Exhibit 3, please.

(Whereupon, the document above referred to was marked Local 311 Exhibit No. 3 for identification.)

Q. (By Mr. Goldberg.) I show you Local 311 Exhibit No. 3 marked for identification and ask you if you know what that is?

(Handing document to witness.)

A. Well, I have seen it before.

Q. The heading is some questions and answers concerning the Wagner Act, is that true?

A. That is right.

Q. Did you have one of those on your bulletin board at the plant?

A. I think we did.

Q. Who furnished you with it?

A. Either the Metal Trades Association or National Manufacturers Association, I am not sure which.

Q. Did some of the men come and ask questions concerning the meaning of some of the answers or for further clarification as to answers on this questions and answers?

A. Not that I recall.

727 Mr. Rissman: Is there any date on there, Mr. Goldberg?

Mr. Goldberg: No, no date.

Q. (By Mr. Rissman.) Do you recall when it was posted, Mr. Falk?

A. I don't.

Mr. Engelhard: I can give you the date, subject to verification, I find it was on the 18th or 24th of June.

Mr. Goldberg: 1937?

Mr. Engelhard: 1937, the 18th or 24th of June.

Mr. Rissman: Was it after the Supreme Court decision upholding this Act?

Mr. Engelhard: Yes.

Mr. Goldberg: I ask that that be admitted as Local 311 Exhibit No. 3.

Q. (By Mr. Goldberg.) You don't know whether this is the application, and you had not seen it before?

A. I don't recall having seen it, I may have seen it, I will say.

Trial Examiner Batten: If there is no objection Local 311 Exhibit No. 3 will be received.

(Whereupon, the document above referred to, marked Local 311 EXHIBIT NO. 3 was received in evidence.)

Mr. Engelhard: What is 2?

Mr. Goldberg: This is questions and answers to the
728 Wagner Act.

Mr. Engelhard: That was posted on June 18th.

Q. (By Mr. Goldberg:) Now, this Exhibit No. 19, that is, Board's Exhibit No. 19 is the card sent out by Mr. P. A. Santner.

A. That is right.

Q. And in that there is nothing said as to whether the Falk Corporation is in favor of labor unions or against labor unions, is there?

A. It says very distinctly:

"And the outcome of his visit was very favorable. Only the hours that you men wish to work remains to be settled."

That is a misstatement.

Q. The question is, is there anything in there that says The Falk Corporation is favorable or unfavorable to labor unions?

A. It does not say so, but the inference is.

Q. Don't you think the first paragraph of this letter of April 16th, 1937, which is Board's Exhibit No. 18 is an adequate answer, if the fact is as you state it to be, the contention of Mr. Santner, without going in there and stating, "We are not in favor of the union"?

Mr. Engelhard: I submit, your Honor, the document speaks for itself and the Examiner is the person to interpret that.

729 Trial Examiner Batten: Of course the exhibits answer for themselves. There is one other matter, however, in connection with this transaction that the Examiner would like to have some additional light on and that is, if you will, have the witness repeat the conversation that took place at the conference between yourself and Mr. Kingsland. I don't recall that is in the record.

Mr. Engelhard: There is no evidence of that.

Trial Examiner Batten: The conversation, just what he said, what was discussed, and I think if that is in the record, I believe the Trial Examiner can take that conversation as testified by the witness and later by Mr. Kingsland, take the postal card and take the letter and I believe the Trial Examiner will be in a position to draw his own conclusions as to these matters.

Mr. Rissman: Some of their conversation is in, but this might be a good place to get in more of it.

Trial Examiner Batten: Well, there may have been some, but I don't recall distinctly just exactly what was discussed at that conference.

Q. (By Mr. Goldberg.) You just heard the comments of the Examiner. Will you please tell us, having in mind what the Examiner would like to have for the record so that he can study it and be able to piece this thing together, tell us what was said by you and Mr. Kingsland in your office.

730 A. I think this is precisely what was said: Mr. Kingsland came in the office unannounced—had not telephoned me and made an appointment, but I saw him, he came to my office.

We talked for a few minutes, and as I recall the conversation, he asked me whether I would recognize him as the bargaining agent for the men in the powerhouse.

I told him that I thought that was a rather sudden request, and I did not think I was ready to answer that at this time without first having a little talk with some of the boys out there, to find out how they felt about it.

I asked him how many men he had and he said he had 17 out of 19 as I recall.

I asked him if he would furnish me the list of names and he said he hadn't his list with him.

I said, "All right, suppose then that you get your list and some time a little later in the week or ten days from now call me up and we will have another meeting."

That was substantially the conversation as I recall, that I had in my office with Mr. Kingsland.

Q. (By Trial Examiner Batten.) Now, at that conference was there any discussion or statement by Mr. Kingsland about hours and wages?

A. Yes, I believe there was.

I told Mr. Kingsland, as I recall it now, that we had been paying our powerhouse employees on a monthly basis

731 since 1927, that we had given them vacations with pay, that we had paid the men when they were off sick.

Then I think, if I recall correctly, Mr. Kingsland told me what their scale was—what it is now I don't remember, I think around one dollar an hour and 48 hours or 40 hours a week.

That I think was the conversation.

Q. Do you recall any conversation, Mr. Falk, at that time with respect to hours?

A. Well, I think I told Mr. Kingsland that we were working on a 48 hour week. I don't recall whether I said to him about 40 hours was a week's work or not. I think perhaps I did.

Q. Was there any discussion at that time about any other working conditions in the powerhouse?

A. Not that I recall, no.

Q. (By Mr. Lamfrom.) Was there any discussion about The Falk Corporation signing an agreement covering hours, wages and working conditions with this union?

A. Well, no, Mr. Kingsland asked to be recognized as the bargaining agent. I don't recall that at that time he asked for anything like having a signature or anything.

Q. Did he present to you any form of contract which he asked you to consider?

A. I don't recall that.

732 Q. Did you say anything to Mr. Kingsland to the effect that you would consider for The Falk Corporation the entering into of a contract covering hours, wages and working conditions with this union?

A. No, I think as I recall the conversation I told Mr. Kingsland I would want to talk to the boys about it before I did anything.

Q. Did Mr. Kingsland ask you to enter into a contract with the union?

A. I don't think he did.

Mr. Goldberg: That will be all the questions I have, Mr. Examiner.

Mr. Rissman: I have no questions.

Mr. Clark: I have none at this time.

Trial Examiner Batten: Is that all, Mr. Goldberg?

Mr. Goldberg: That is all.

Trial Examiner Batten: I have a question.

Mr. Engelhard: I just want to make the statement that we reserve our cross examination.

Q. (By Trial Examiner Batten.) Mr. Falk, during the time you had the Works Council system in 1933 and for a while thereafter, did the men who were on the Council have meetings at regular intervals? I mean did they have a certain time to hold their meetings once a week or monthly?

A. I think they did, yes, sir.

733 Q. Well now, were some of those meetings held during working hours?

A. Yes, they were.

Q. Were any of those representatives docked for the time that they spent in these conferences representing the men?

A. No, not in the Works Council.

Q. Not in the Works Council?

A. No, sir.

Q. Now, was the operations of Mr. Kinch and his solicitation of employees to sign a petition; did that ever occur during his working hours, if you know?

A. I don't know.

Q. Who would know that, Mr. Green and his foremen?

A. I think Mr. Green and some of the foremen would know that.

Q. When Mr. Green and the foremen represented to you about Mr. Kinch's activities did they tell you of any specific instances where Mr. Kinch had interfered with production?

A. Mr. Batten, when a man is operating a large boring bar, for example, that he has got a piece of work on it that is, worth about ten to fifteen thousand dollars and his attention is distracted from his work, if he is boring one that takes a couple of thousandths or one ten-thousands of an inch, he may scrap a very expensive piece of work, and that interferes materially with production.

734 Q. Yes, I understand that, but what I am getting at is, did either Mr. Green or the foremen give any specific instance, mentioning the workmen and machine, work that had been spoiled as a result of Mr. Kinch's activities?

A. They told me a number of instances where he interfered with the men.

Q. Yes, but did they indicate to you that the interference was of such a nature that it resulted in spoiling work, or the necessity of shutting down his machine? In other words, did they go into that matter that specifically with you?

A. No.

Q. So that Mr. Green or his foremen would be able to fully describe the interference that they reported to you?

A. I should say so, yes, sir.

Trial Examiner Batten: I think that is all.

Redirect Examination.

Q. (By Mr. Rissman.) Mr. Falk, directing your attention to the meetings of employees starting on April 12th and lasting for three or four days, when they were forming this Independent Union, do you recall that the company paid the employees for the time during which they were in attendance at those meetings?

A. No, I don't.

Q. Don't you know that they were paid and that subsequently that pay was deducted, and the reason given for
735 the deduction was that the company had been advised it was against the law to pay the employees for such consultation and conference?

A. I don't know that.

Q. Do you know anything at all with reference to whether or not they received any money for attending meetings at which they organized the independent union?

A. No.

Trial Examiner Batten: You mean received money from the employer.

Q. (By Mr. Rissman.) Received their regular hourly pay while they were absent from their work attending these meetings?

A. I don't know that.

Mr. Rissman: That is all.

Mr. Engelhard: That is all.

Trial Examiner Batten: That is all, Mr. Falk.

Mr. Rissman: If the Examiner please, I think at this time we should have some clarification as to what is meant by reservation of cross examination.

To my mind counsel may waive cross examination and then later examine the witness as his witness, or he examines him now.

I wonder just what is meant by the reservation of cross examination.

736 Trial Examiner Batten: Well, I will ask counsel, having heard your statement, to indicate to the Trial Examiner what he means by his statement and then perhaps I can tell you.

Mr. Lamfrom: I had in mind that it is a short cut here to get the evidence in, if we at the same time we examine our witnesses in our case, that we cross examine such wit-

nesses as we would otherwise cross examine, who are really called from our side of the case.

Trial Examiner Batten: In other words that has reference to any such witness as might technically be termed respondent's witnesses.

Mr. Lamfrom: Our witnesses.

Trial Examiner Batten: Respondent's witnesses.

Mr. Lamfrom: Yes.

Trial Examiner Batten: Is there any objection, Mr. Rissman, to such a procedure?

Mr. Rissman: I am still unaware of the effect of the reservation of cross examination. The witness is either cross examined or is not, and any examination counsel cares to make later, he makes him a defense witness.

Trial Examiner Batten: I don't presume that there would be any particular difference of opinion as to the technical point as to whether cross examination is being waived at this time, and then when the witness is called in behalf of the
737 respondent, the respondent counsel is permitted at that time to inquire into any and all matters which he cares to go into.

Mr. Lamfrom: The only advantage we will get from technical cross examination would be the right to ask the witness leading questions, and that is not present in this kind of a hearing. In fact the law is a liberal law under the usual rules of evidence in courts of law and equity not present here.

Mr. Rissman: They are present but not controlling.

Mr. Lamfrom: How?

Mr. Rissman: They are present but not controlling.

Trial Examiner Batten: As far as the Trial Examiner is concerned I have never attempted to make any distinction such as that in the examination of a witness. After all the thing we are concerned about are the facts.

Mr. Lamfrom: That is it.

Trial Examiner Batten: Mr. Rissman, is there any objection?

Mr. Rissman: Frankly, because I don't know the points to be made by the reservation of cross examination, I will object to such reservation. If counsel wishes—if the only point counsel wishes to protect is the right to ask leading questions, I have no objection.

Mr. Engelhard: That is about all we could expect.

Mr. Lamfrom: We expect to put in our case, of course,
738 and in putting in our case we will undoubtedly rebut certain testimony that has been elicited by my friend on the other side in the examination of these witnesses, if we feel it is necessary to have it rebutted.

Trial Examiner Batten: I see nothing prejudicial in that to any of the parties to the proceeding.

(Witness excused.)

Mr. Rissman: Mr. Green, please.

HARRY GREEN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name, please.

A. Harry Green.

Q. Where are you employed, Mr. Green?

A. The Falk Corporation.

Q. How long have you been employed by The Falk Corporation?

A. 26 years.

Q. What is your present occupation?

A. Superintendent of machine shop.

Q. How long have you been superintendent of the machine shop?

A. About 21 years.

Q. Prior to that what position did you have?

739 A. I was foreman in the helical gear department.

Q. As superintendent of the machine shop you have the right to hire and discharge employees working in that department?

A. Yes.

Q. And you also pass upon the conduct of employees in the department?

A. Yes.

Q. And you pass upon the nature and quality of their work, do you?

A. Well, that is up to the inspectors, the inspectors do that.

Q. Well, if the inspectors report to you that a particular

employee is deficient in his manner of work, why, you take it up with the employee?

A. Yes, sir.

Q. And take such steps as you feel necessary to correct the deficiency?

A. Yes, sir.

Q. In other words, you have the general duties and powers of a superintendent who is in absolute charge of his employees, subject only to the will or control of Mr. Falk and who else?

A. Mr. Falk, that is all.

Mr. Lamfrom: Harold Falk.

Mr. Rissman: Mr. Harold Falk, the man who just tes-
740 tified?

The Witness: Yes.

Q. (By Mr. Rissman.) And you consult with Mr. Falk on questions of policy regarding employees working in the machine shop?

A. Yes, sir.

Q. You consult with your foremen on those matters, too?

A. Yes, sir.

Q. How many foremen do you have, Mr. Green?

A. About 20. I could not say exactly, but it must be about 20.

Q. That includes the day and night shifts?

A. Yes, sir.

Q. What hours of the 24 hour day are you at the plant, Mr. Green?

A. I am there from seven-thirty to four-thirty or five o'clock each day.

Q. Do you ever appear there in the evening?

A. Occasionally, yes, probably once a week or something like that.

Q. Just to check up—

Mr. Lamfrom: When you shake your head it does not get into the record: When he said "Just to check up" you shook your head, you meant yes?

The Witness: Yes.

741 Trial Examiner Batten: I might tell you, Mr. Green, you will have to answer up so the reporter can hear what you say.

The Witness: All right.

Q. (By Mr. Rissman.) And in a general way and in spe-

cific instances you carry out the policies of the corporation as announced by Mr. Falk?

A. Yes, sir.

Q. With reference to your employees?

A. Yes, sir.

Q. Are you consulted in relation to matters of policy that are established by the company?

Mr. Lamfrom: With respect to employment relations?

Q. (By Mr. Rissman.) Employment relations, we are talking about.

A. Yes, Mr. Falk will consult with me sometimes on workmen and things like that.

Q. Do you know Anton Kinch?

A. Yes.

Q. How long have you known Mr. Kinch?

A. Seven years.

Q. You knew him all the time he worked under you at the plant?

A. Yes, sir.

Q. What did you know about the quality and nature of Mr. Kinch's work?

742 A. Mr. Kinch had no experience when he came to our plant. He was taken in and put on a bench and broken in, to take care of the work.

Q. You developed him into a very efficient worker?

A. Well, he was fair, a fair workman in that line of work that he was doing.

Q. Is it not true that Mr. Kinch worked steadily throughout the depression when other people were not,—I mean, were being laid off?

A. He had his share, like the rest of the men.

Q. Is it true he had a little more than the other men?

A. No, I would not say so.

Q. At any rate he was not any worse than the other men?

A. No.

Q. What have you to say about Mr. Kinch's conduct as an employee before October, 1936?

Mr. Lamform: Now, do you refer to the conduct of Mr. Kinch as an employee with respect to efficiency in work or conduct with reference to how he acted among his fellow employees, or conduct otherwise?

Mr. Rissman: Mr. Green can inform us.

Mr. Lamform: Well, I think counsel should make it clear.

Q. (By Mr. Rissman.) Do you know what is meant by the conduct of an employee, Mr. Green?

743 A. Yes, I know what you mean.

Q. Will you explain about Mr. Kinch's conduct prior to October, 1936?

A. Well, Mr. Kinch wasn't really any better than any other man; Mr. Kinch would spoil work and the foreman would complain to him. He was just the ordinary run of workman.

His conduct as respects his conduct was all right, except, as I say, he would spoil work occasionally like any other man.

Q. But the occasions upon which he spoiled work were not so numerous as to result in his discharge?

A. No.

Mr. Lamfrom: There is no claim made here that he was discharged for spoiling work, why go into that? There is no issue on that. The company does not claim he was discharged for spoiling work.

Trial Examiner Batten: Well, apparently his work was satisfactory up to this time; and Mr. Green says there was no complaint against his work. However, I see no objection to his answering that question. There may be a question as to how material it may be.

Q. (By Mr. Rissman.) Mr. Green, will you tell us now about Mr. Kinch's conduct in the plant with reference to his relations with other employees before October, 1936?

744 A. You mean before he got on the Works Council or after he got on the Works Council?

Q. After he got on the Works Council and before he had anything to do with that reclassification proposal.

A. Well, he was just ordinary, there wasn't any complaint so far as I know.

Q. Now, tell us how it was before he got on the Works Council?

A. There was no complaint then.

Q. When did you first have occasion to complain about Mr. Kinch's conduct in the shop?

A. After he got on the Works Council, the foremen complained.

Q. What did they complain about after he got on the Works Council?

A. About him going around the shop in working hours and talking to the men.

Q. What was he talking to the men about?

A. Oh, various plans that Mr. Kinch had of his own.
Q. Plans with reference to what?
A. Out around the Works Council and the way the shop should be run.
Q. What were some of his objections, if you know, to the way in which the Works Council was being run?
A. Well, he had so many objections until I couldn't exactly explain every one, but one thing he complained about was
745 the canteen business taking so much time.
Q. Tell us something more about what he complained about with reference to the canteen?
A. Well, he was one of the biggest objectors to the canteen himself, that they didn't have clean milk, clean milk bottles. That was one of the things he brought up himself, and that sort of stuff.
Q. He objected to the business of the canteen taking up too much of the Works Council meeting?
A. Only once to my recollection.
Q. What were some of the other matters in your mind that made Mr. Kinch a poor employee after becoming a member of the Works Council?
A. He seemed to be bothered more about the Works Council business than his own work.
Q. What were his duties, if you can tell us, as a representative of the Works Council?
A. I don't just understand that.
Q. What are the duties of a representative of the Works Council?
A. To represent his department that he was in, for the men that he was representing.
Q. And in his representing his men was it necessary for him to consult with his men regarding problems that might arise?
746 A. Not during work hours.
Q. Was it necessary at any time?
A. At noontime he could, or if these men came to him then.
Q. What were some of the other things he did after he joined the Works Council that made him a poor employee?
A. Well, for one thing, the petition that he circulated.
Q. When was the first time you received any complaints from the foremen about Mr. Kinch's conduct?
A. Oh, about three months before his discharge.
Q. What did you do when you received that complaint?
A. The foreman warned him.

Q. What foreman?

A. It was, I think, two foremen, one by the name of Duechras and Henderson.

Q. Who was the one that complained?

A. Both of them complained to me.

Q. Which one warned Mr. Kinch?

A. They both warned Mr. Kinch at different times.

Q. Who was the first one?

A. Well, I couldn't answer that.

Q. What was the specific complaint about three months before he was discharged?

A. Going around and talking to the men and not looking after his work.

Q. Was that the time he was passing around the petition?

747 A. No, the petition was a little later, I think.

Q. Did you ever hear of any things he was talking about to the men when he went around to them?

A. I didn't personally, no. I only know from hearsay, what the men said.

Q. From hearsay what was it?

A. Well, for one thing he wanted—he had some different ideas of what he wanted to do. Some of the men, he wanted some of the men in the higher brackets to have their wages lowered and give it to the lower men.

Q. In other words, he proposed a reclassification of jobs and rates?

A. Well, that was before he got his reclassification set out.

Q. Yes, but I think you referred to—

A. Yes, sir.

Q. —a readjustment of the scale?

A. Yes, sir.

Q. And there were some other things you heard about.

A. Well, there were some other things that—he told some of the men how much the different executives of the firm, how much they were making a year, they ought to split it up, and things like that.

Q. When he told some of the men who were—when he told some of the men how much the executives for the firm

748 were making a year did he misstate the earnings of the executives?

A. I have no knowledge of that at all, I couldn't tell you.

Q. What else did he tell the men that you heard about?

A. Well, I can't remember specifically, a lot more outside

things that he wants to get up when he wanted to classify all the men.

Q. You say he did these things during working hours?

A. Yes.

Q. His working hours?

A. Yes.

Q. Did you ever see him doing them during his working hours?

A. Just once.

Q. When was that?

A. I couldn't give the date.

Q. Approximately?

A. That is impossible.

Q. Was it three months before he was discharged?

A. Yes, less than three months before he was discharged.

Q. Did you notice him working on his machine?

A. He didn't work on a machine.

Q. What kind of work did he do?

A. He was an assembly man, worked on the bench.

Q. Did he have a bench at the time?

A. Yes.

Q. And he left it?

749 A. He wasn't working at it.

Q. Was he working on piecework or time work?

A. Time work.

Q. How long did he leave that job when you saw him?

A. Oh, possibly 15 minutes.

Q. What was he doing?

A. He was talking to another man.

Q. What did you tell him?

A. I went to the foreman.

Q. It isn't your practice to tell the men directly, you tell the foremen?

A. I go to the foremen.

Q. What did you tell the foreman?

A. I told the foreman to keep the man on the job and not let him waste his time.

Q. Do you know what Mr. Kinch was talking to this other man about then?

A. No.

Q. Who was the other man?

A. Duechras was the foreman.

Q. No, who was the man Mr. Kinch was talking to when you saw him?

A. That I couldn't say offhand.

Q. What kind of work did this other man do?

A. An assembly man, too.

750 Q. Was he doing the same kind of work as Mr. Kinch?

A. Yes.

Q. Do you know whether or not they might have been talking about the work?

A. No.

Q. Do you know whether or not Mr. Kinch went over there to inquire about how to perform a certain job he was doing?

A. No.

Q. Did the foreman talk to Mr. Kinch after that?

A. Yes.

Q. What did he say?

A. He warned him about wasting his time, talking about various things, about his plans, instead of looking after his work.

Q. Is a man always wasting his time when he is away from his work in the plant?

A. Generally.

Q. Aren't there occasions when a man might of necessity go away from his particular bench in the performance of his work?

A. Not that I know of, there is no necessity for that man to go away. His foreman is there to look after him in that capacity.

Q. Where was his foreman on this occasion?

A. In the other end of the shop somewhere.

751 Q. He wasn't anywhere close by?

A. No.

Q. When was the next time you received any complaint about Mr. Kinch being away from his work?

A. It was around the time he was circulating the petition.

Q. Was it during his working hours?

A. Yes, the petition was passed around during his working hours.

Q. Was he walking around or was the petition passed from man to man?

A. He gave it out to this man, and they passed it around from man to man.

Q. Was Mr. Kinch walking around the shop or was the petition being circulated around?

A. I personally didn't see the one that Mr. Kinch had, I saw one that he had handed out to the men.

Q. So you don't know whether he just handed it to the man next to him, or how it started?
A. No.
Q. You didn't see him walking around the shop with it?
A. No.
Q. Now, did the foreman report to you that he saw him walking around with the petition?
A. Yes, sir.
Q. Who?
752 A. Duechras.
Q. What did he report?
A. He told me he was circulating the petition around the plant.
Q. What did he mean by circulating the petition? Did he mean Mr. Kinch had the petition walking around with it or how did Mr. Kinch carry the petition?
A. There were six copies, I think, of that petition circulated throughout the shop.
Q. So Mr. Kinch could not possibly have walked around with it?
A. Not with every one.
Q. If anyone walked around with every one there, there might have been five other men walking around, too?
A. Yes, but Mr. Kinch brought them there for them to do it.
Q. He started it?
A. Yes, sir.
Q. He wrote up the petition?
A. Yes, sir, he brought copies of it in.
Q. He brought in all six?
A. Yes, sir.
Q. And there might have been others who walked around with the petition?
A. I caught one man with a petition.
Q. Who did you catch?
753 A. I caught one of the inspectors from No. 2 shop; Mr. Kinch worked in No. 3 shop.
Q. What was this inspector's name?
A. Rosennecke.
Q. Did you fire him?
A. What?
Q. Did you fire him?
A. No.
Q. What did you do?

A. I warned him and told him he had no business to do that kind of stuff.

Q. Did you fire anybody else for circulating a petition?

A. No, not at that time.

Q. Did you fire anybody later for circulating these same petitions?

A. No.

Q. Did you warn anybody else at that time?

A. We warned various men at different times; we even warned the Works Council men for the same thing and different things, at different times, in the last four or five years, for going around during working hours.

Q. With petitions?

A. Well, whether they had petitions or not with petitions, but going around talking to the men.

Q. Did you ever fire anybody for going around with
754 petitions?

A. No.

Q. Did you ever fire anybody for going away from his work during working hours when you knew he was discussing some question of the Works Council with a fellow employee?

A. That is a hard thing to answer but I guess we have done it.

Q. Well, within the last year and a half.

A. I coudn't be sure about that.

Q. At least you cannot recall any such case to your mind?

A. No, I couldn't.

Q. Can you tell us in the last three years how many men have been discharged by the company for the same reasons for which Mr. Kinch was discharged?

Mr. Engelhard: Now, that is hardly a fair question; the reasons for which Mr. Kinch was discharged have not been developed by this man.

Trial Examiner Batten: Well, I presume he knows the reason.

Q. (By Trial Examiner Batten.) Do you know the reason Mr. Kinch was discharged,—don't you?

A. Certainly.

Q. What was the reason?

Trial Examiner Batten: Well, I think he may answer the question asked, whether or not there were any others in
755 the last three years discharged for the same reasons.

The Witness: I don't remember.

Q. (By Mr. Lamfrom.) Was there any case when other employees did the same things that Mr. Kinch did up to the time of his discharge?

A. No.

Q. (By Mr. Rissman.) Have you had any disturbers in the plant other than Mr. Kinch?

A. Only since the C. I. O. came in.

Q. Have you discharged any of them?

A. We discharged two.

Q. They have been reinstated?

A. They are reinstated.

Q. Prior to the C. I. O. did you have any disturbers in the plant who were discharged?

A. We had one man, I think.

Q. Who was that?

A. A man by the name of Goldman.

Q. How long ago was he discharged?

A. About seven years ago, I imagine.

Q. In the last four years.

A. Four years, I couldn't say.

Q. Do you remember Rudolph Oristo?

A. Yes, I don't know him under that name; his name is Goldman, as I knew him.

756 Q. Is that the man over there?

Mr. Rissman: Will Mr. Oristo please stand.

The Witness: I knew him as Goldman.

Q. (By Mr. Rissman.) He worked under you?

A. Yes, sir.

Q. When was he discharged?

A. I couldn't say exactly how long ago that was, but I would say five or six years ago.

Q. Why was he discharged?

A. Well, he didn't follow the rules of the shop.

Q. What rules of the shop did he violate?

A. Walked around, going different places where he should not be, and for talking and things like that.

Q. The same thing as Mr. Kinch?

A. Yes, sir.

Q. He was never reinstated?

A. No. When he was discharged he insulted the foreman very badly and the foreman would not have him back any more.

Q. Now, these men who were discharged recently, since

e C. I. O. has been, were they guilty of the same things, the
me things Mr. Kinch and Mr. Oristo were guilty of?
A. They were guilty of the same thing as Kinch and more,
ly it was this time, they were threatening workmen.
Q. Why were they reinstated?
A. I beg your pardon?
7 Q. Why were they reinstated?
A. Mr. Falk reinstated them.
Q. Why were they reinstated?
A. I couldn't tell you, Mr. Falk reinstated them; I had
thing to do with it.
Q. You don't know the reason for it?
A. No.
Q. Did you ever report to Mr. Falk about the activities
Mr. Kinch?
A. Yes.
Q. When?
A. Two months before his discharge.
Q. What did you report?
A. That he was interfering with the men, disturbing the
en with his theories and things like that.
Q. Tell me, Mr. Green, how was he disturbing them with
s theories?
A. Well, he was there in the office one day and told the
anagement could do 30 per cent more work if they got a
are of the profits, and that upset the men because the men
ew they couldn't do 30 per cent more.
Q. So, he was putting funny ideas in their heads?
A. Yes,—well, it wasn't a funny idea, it was practically
insult to the intelligence of the men.
Q. In what other ways did he disturb the men?
8 A. By his petition.
Q. How did he disturb the men?
A. The biggest part of the men were against his peti-
on, because it wasn't practical, they thought it wasn't prac-
al to have one scale because the men in the higher brackets
ould get their wages lowered and they would have to work
r so much less money if they were classified.
Q. These things caused a mental effect upon the men, so
speak, these various activities of his?
A There was another time when some of these men didn't
gn his petition.
Q. Yes.
A. Of course, if they didn't sign the petition other men

ostracized certain men and the consequence was some of these men spoiled work because they couldn't work.

Q. You mean because of their mental condition?

A. Yes, sir.

Q. They were embarrassed?

A. Yes, sir.

Q. Did you ever see Mr. Kinch interfere with the work of men physically by his presence at their place of work?

A. Not personally, no.

Q. Was it ever reported to you?

A. It was reported to me by the foreman—by the two foremen.

759 Q. In what manner did he physically interfere with the work of the men?

A. By talking to them and not letting them work.

Q. Did that ever result in any spoiled work or errors in work?

A. That I couldn't say.

Q. Was it ever reported to you that it did?

A. No.

Q. If Mr. Kinch were to be reinstated at the plant and if he were to refrain from influencing men in their thoughts about how much they could earn and should earn would he be a good worker?

A. I think we would get a lot of objections from the workmen.

Q. Why?

A. Because of his activities before.

Q. Is it the practice of the company to consult the workmen whenever they hire a man and put him in the shop?

A. No.

Q. Is it the practice of the company to consult the workmen whenever they want to discharge a man?

A. No.

Q. Is there any reason why the company would not have Mr. Kinch in its employ, assuming that he refrained from his disturbing influences?

760 A. I don't see any reason except what I have just stated.

Trial Examiner Batten: I think we will adjourn, gentlemen until two o'clock.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2:00 o'clock p. m. of the same day.)

761 After Recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 2:00 o'clock p. m.)

Trial Examiner Batten: I believe we will proceed, gentlemen.

We have the permission of Mr. Clark, who represents the Independent Union, and Mr. Goldberg, who represents the Operating Engineers, to proceed.

HARRY GREEN, resumed as a witness by and on behalf of the National Labor Relations Board, being previously duly sworn, testified further as follows:

Direct Examination (Continued).

Mr. Rissman: Mark this Board's Exhibit No. 25 for identification.

(Whereupon, the document above referred to was marked Board's Exhibit No. 25 for identification.)

Q. (By Mr. Rissman.) Mr. Green, I hand you herewith Board's Exhibit No. 25 for identification, and ask you to tell me what that booklet is?

(Handing document to witness.)

A. It is a book of by-laws of the Falk Works Council.

Q. Are those the by-laws that were in effect during all the time that the Works Council existed?

762 A. Practically.

Q. Directing your attention to page 18, Article 13, will you read what appears thereon paragraph No. 1.

A. Yes.

Q. Now, that paragraph states as follows:

"Every employee representative serving on the Works Council shall be wholly free in the performance of his duties as such and shall not be discriminated against on account of any action taken by him in good faith in his representative capacity," does it not?

A. Yes.

Q. Now, what is the meaning of that paragraph with reference to the acts of Mr. Kinch in and about the plant?

A. I would say that that paragraph means there outside of working hours.

Q. Does it say that?
A. It does not say that but it is understood that way.
Q. How was it understood?
A. It was understood that way among the representatives.
Q. Were there any other rules or by-laws of the Works Council other than those contained in this booklet?
A. Not after that booklet was drawn up.
Q. I direct your attention to Article 16 on the next page, page 19, and ask you to read that, please.
A. Yes.

763 Q. That article states that the "Employee representatives shall be compensated at their respective hourly rate for time spent at meetings of the Works Council and the Fact Finding Committee; and perform during working hours such other duties as they may be called upon to perform under this plan."

Will you state now in view of that article what other duties a member of the Works Council could perform during working hours, in addition to attending meetings?
A. Only if he was working for the Works Council attending to some other matter.
Q. Did the representatives of the Works Council have any other duties aside from those assigned to them specifically?
A. Only by the Works Council.
Q. Didn't they have any general duties by virtue of their being representatives?
A. No.
Q. Wasn't it their duty to know the disposition of the employees they represented on any particular matter?
A. Only by these men bringing it up to them.
Q. Wasn't it the duty of the representatives to determine how the employees in their particular departments felt with reference to any matters, such as a wage increase or overtime pay, or any other conditions?

764 A. I think you will find in there that things like that were supposed to be taken up with the foremen first.
Q. Yes.
A. And then with the representatives.
Q. That is right.

Mr. Lamfrom: Refer to Article 12 on Procedure for Adjustments.

Q. (By Mr. Rissman.) This refers to the condition where an employee had a particular grievance, he was first to take

it up with his foreman and if he could not get any satisfaction there, he was to take it up with his representative.

A. The superintendent and then the representative.

Q. And the representative.

A. Yes.

Q. But in addition to that, on the question of general wage increase or on the question of whether or not the employees would work on days,—whether they would work on voting days or election days, and by elections days I mean the city and state, don't you know that it was the duty of the representative to find out how the men in his department felt about those things?

A. That is what they invariably did.

Mr. Rissman: I offer in evidence Board's Exhibit 25, Mr. Examiner.

Trial Examiner Batten: If there is no objection, it
765 will be received.

(Thereupon the document above referred to, heretofore marked for identification as BOARD'S EXHIBIT NO. 25, was received in evidence.)

Q. (By Mr. Rissman.) Were you a management representative, on the Works Council, Mr. Green?

A. No.

Q. Did you ever attend any meetings of the Works Council?

A. I was chairman; I had no vote.

Q. You were one of the members of the company who attended meetings.

A. Yes.

Q. And as chairman you participated in the various discussions?

A. Yes, sir.

Q. And you were in a position to know which of the employee representatives were active and which were inactive in the Works Council affairs.

A. Yes.

Q. After the passing of the Works Council, Mr. Green, did you have anything to do with the formation of the Independent Union of Falk Employees?

A. No.

Q. Pardon?

A. No.

766 Q. Now, did you ever talk to anybody about that organization?

A. No.

Q. Well, did you ever talk to Mr. Falk or any of your superiors about it?

A. Not to my knowledge.

Q. Did you ever talk to any employees about it?

A. No.

Q. Did you ever talk to any foremen about it?

A. Repeat that question.

Mr. Rissman: Read the question please.

(The question was read.)

A. Not to my knowledge, I didn't.

Q. (By Mr. Rissman.) Have you ever spoken about the Independent Union at any time to anybody?

A. Yes, sir.

Q. To whom?

A. Mr. Landrey.

Mr. Lamfrom: Who?

The Witness: Mr. Landrey.

Q. (By Mr. Rissman.) Mr. Landrey is president of the Amalgamated Association of Iron, Steel and Tin Workers?

A. Yes, sir.

Q. When did you speak to him?

A. Well, he has laid complaints at different times 767 about the Independent Union doing things and I have talked about it, and I told him neither the Independent Union nor the C. I. O. nor any other union could do any soliciting or collecting of dues during work hours.

Q. Did you find that the Independent Union had been soliciting or collecting dues during work hours?

A. Both of them.

Q. Answer my question please.

Mr. Rissman: Read the question please.

(The question was read.)

A. I personally did not see it, but it was reported to me that they were doing it.

Q. (By Mr. Rissman.) It was reported to you who was doing it?

A. The Independent Union.

Q. I mean which individual.

A. I couldn't tell you the individual, it was said the Independent Union.

Q. What action did you take with reference to that activity by the Independent Union?

A. I went and warned the members of the Independent Union that they could not do that, and I also warned the C. I. O.

Q. What was your instructions exactly as to such activities by union people?

A. Mr. Falk told me not to allow them to do it on any side.

768 Q. And you have enforced that order impartially?

A. Absolutely.

Q. And wherever you noticed a violation of it by the C. I. O. or Independent Union, you remedied it?

A. I have tried to remedy it.

Q. What is the situation at the present time, has it been remedied?

A. Practically, so far as I know.

Q. When was the last time you had any reports of violations of that rule made to you?

A. Possibly four weeks ago, four to five weeks ago.

Q. What did you do in that case?

A. I went and warned them again.

Q. Have you done anything more severe than merely warn the people who were supposed to be guilty of such violation?

A. Not since those two men were discharged about two months ago.

Q. You refer now to those men who were reinstated?

A. The two men who were reinstated.

Q. Have you any preference, Mr. Green, for either one of the labor organizations involved there, the Independent Union or the C. I. O.?

A. I have not, as I told Mr. Landrey, I don't care whether it is the C. I. O., the Independent, or the A. F. of L.; I told Mr. Landrey only last week, and I have told him that

769 more than once.

Q. You feel that way about all three organizations.

A. Absolutely.

Q. What is your feeling about the three organizations?

A. Pardon?

Q. What is your feeling about them?

A. I don't know what you mean by "feeling".

Q. You said you felt the same way about the C. I. O., the A. F. of L., and the Independent Union.

Will you please tell us what that feeling is?

A. Well, I just feel they are all in the boat.

Q. Which boat is that?

A. Well, they are organizing to get what they can out of the people, that some of them are going a different way about it, that is all.

Q. Which way do you think is the best way of the three?

A. I can't express an opinion on it.

Q. Why can't you?

A. How can I?

Q. Do you have an opinion?

A. The only opinion I have, you might say, the Independent, they don't pay any dues, that is the only thing about it; I don't know anything other about it.

Q. Well, do you have an opinion as to which of these three organization is the best one for the employees of
770 The Falk Corporation?

A. No, I haven't, I have no preference.

Q. I didn't ask you if you have a preference. I asked you if you have an opinion.

A. I have no opinion on it.

Q. What did you mean when you said all you know about the Independent is that it has no dues.

A. Well, what I mean by that is that they collect the dues for their own men and don't send it out of the city somewhere else.

Q. You think the fact that they keep their dues for their local organization rather than pay a per capita tax as other national labor organizations do that makes it a better organization in that respect than the others?

A. I think it is better for the men themselves personally.

Q. Have you ever expressed that opinion to any of your men?

A. No.

Q. Do you know anything about the dues of the C. I. O. or the A. F. of L., or the Independent Union, how much they are?

A. Only what I have heard.

Q. What have you heard?

A. I have heard the A. F. of L. was $1.50, I think it is. I don't know what they have to join.

The C. I. O. $1, and the Independent was $1.25, or something like that. I would not be sure on those figures.

771 Q. Have you ever considered in connection with dues, the fact that the two organizations, the A. F. of L. and

the C. I. O. dues have to be sent to the International, as you say, outside the city, the respective advantages or disadvantages furnished by those organizations as compared to the advantages if any, furnished by the Independent Union?

Mr. Lamfrom: Now, just a moment. It seems to me this man has gone far enough. I don't see how that is material, as to what Mr. Green's views are on dues paid by people.

Mr. Rissman: Mr. Green's views are highly material and relevant.

Trial Examiner Batten: I think Mr. Green's views as to whether or not he favors a labor union, and if so, what type, is material.

Mr. Lamfrom: But here—

Trial Examiner Batten: Now just a moment until I get through with my remarks.

I am not so sure that the internal workings of these organizations, such as their dues and so forth, are particularly material, because in fact I don't think it is material what anybody connected with the company thinks about dues, if th y all go out of town or stay in town, or if they have a party and spend it.

The material thing I think, Mr. Rissman, is whether his view with respect to organized labor and the Independ-
772 ent Union or outside union, or affiliated union, in the same way that Mr. Falk's views were material.

Mr. Rissman: I am trying to find out on what Mr. Green bases his preference for the Independent Union over the other unions. He says he has a preference because of dues of the Association, and we will find out if he has—

Mr. Lamfrom: He didn't say he had a preference. You tried to lead him into that cul-de-sac, but he would not go.

(Discussion followed outside the record, as previously directed.)

Trial Examiner Batten: I think it is material in that respect to find out from Mr. Green whether he knows anything about whether any dues were ever sent out of town.

Mr. Rissman: I don't think he does. Do you?

The Witness: I couldn't answer that except some C. I. O. men told me they get a quarter out of the dollar, and the other 75 cents goes out of town.

That is all I know about it.

Q. (By Mr. Rissman) Now, Mr. Green, outside of the dues question, assuming these unions have the same dues and

all the dues stay here in town, the dues situations were exactly the same, which organization do you think would be the better one for your employees to join?

A. Well, after being chairman of the Works Council for four four years, and seeing how they worked, I think a 773 union belonging to their own shop is better because they get more out of it, would get more out of it than any other union I have seen or heard about.

Q. Have you had any experience with unions, outside of your experience with the Works Council, and outside of your experience in the past two months?

A. No.

Q. When they—when you say they get more out of a union in their own company, you mean out of the union of The Falk Company.

A. Not The Falk Company union, their own union.

Q. Their own union is limited to The Falk Company?

A. Yes.

Q. Like the Independent Union in this case.

A. I think so, yes.

Q. What reason or reasons do you have for feeling that the workers would get more out of that kind of union than the other type?

A. I have seen what the Falk employees got with the Works Council, working four years, and I think they would be better off with their own union in that respect.

Q. Have you ever had an opportunity to compare what they got through the Works Council with what they might have received if they had an outside organization for the past four years?

A. No, only compared other plants, what they got, 774 with what ours got.

Q. Tell us—

Mr. Lamfrom: Let him finish.

Q. (By Mr. Rissman) Tell us, Mr. Green, some of the important things that you got as a result of the Works Council.

A. Well, they got raises in wages quite a number of times, they got bonuses, they got group insurance, they got departmental picnics, bowling parties, and various things like that, and if a man was—if a man didn't have very much money and wanted to borrow money, The Falk Corporation loaned him money without any interest, such things as that.

That was all done through the Works Council at different times.

Q. In your experience as superintendent of the plant for the past 21 years, did the employees get raises before there was a Works Council?

A. Depending on the times, yes.

Q. And did they get bonuses without the Works Council?

A. No.

Q. Did they have picnics without the Works Council?

A. Excuse me.

Q. Yes.

A. Now, you said 21 years. I think in 1920—in 1919 or 1920 there was a bonus paid; I am not quite sure, but I
775 am pretty confident at that time there was.

Q. It has been the policy of The Falk Corporation, and I assume it is now, to grant increases and bonuses whenever the company felt that business permitted such increases or such bonuses, hasn't it?

A. They have them, yes.

Q. Don't you know, Mr. Green, as a man that has been with the company for 26 years, that the company would have granted those same increases and bonuses even in the absence of the Works Council?

A. No, I don't think so.

Q. Don't you think an outside union would have been able to obtain the increases?

A. I don't think so.

Q. Why not?

A. Because I don't think it could have been done.

Q. What was there about the set-up of the Works Council that made it such an effective organization in obtaining increases that you say otherwise would not have been given?

A. Because they were our own men, and they listened to them rather than any outsiders.

Q. Won't the company listen to outsiders?

A. I don't know.

Q. Then you don't know whether or not an outside organization might not have done a better job in getting more
776 increases and greater bonuses.

A. I don't think they could have done it.

Q. But you don't know, do you?

A. How?

MICRO CARD 22
TRADE MARK ®
39
MATTHEW BENDER & COMPANY
MB
13/78
65
microcard

Q. You can't say they couldn't have.
A. Well, of course not.
Q. Have you had occasion to speak to any employees because of their C. I. O. activities in and around the plant in the last few months?
A. Yes.
Q. Can you name any of the employees to whom you so spoke?
A. This was one by the name of Rasey.
Q. How do you spell his name?
A. R-a-c-y—excuse me, that is R-a-s-e-y.
Q. When did you speak to him?
A. He was going around with those cards.
Q. Application cards?
A. Application cards.
Q. What did you say to him?
A. I told him that he could not do it.
Q. What else did you say to him?
A. I told him nobody else could do anything—nobody else could do it, any other man in the plant, as it was against the rules of the plant, and against the law to do that, that those—to do those kind of things.
777 Q. What did he say?
A. He admitted he had done it.
Q. Did you have occasion to speak to any others that you can name?
A. Only those two men that were let go and reinstated. Oh, yes, there was another one, a man by the name of Bernettie.
Q. Bernettie?
A. Yes, sir.
Q. When did you speak to him?
A. Some time around March or April, some time in there. I saw him too.
Q. When did this rule become effective, that they were not to pass out application cards on company time?
A. I couldn't tell you the exact date.
Q. How was the rule announced to the employees?
A. Through the foremen.
Q. Was there any written notice posted?
A. No.
Q. Was there any letter?
A. Not until a later date.

Q. When was the written notice posted?
A. I couldn't tell you exactly, but Mr. Wilson had a copy of it and Mr. Landrey had a copy of that I think.
Mr. Lamfrom: Is that the notice of April 16th?
778 Mr. Rissman: Off the record now please.
(Discussion outside the record.)
Q. (By Mr. Rissman) Do you recall, Mr. Green. speaking to Joe Pemper? Do you know Joe Pemper?
A. Yes.
Q. Who is he?
A. I think I did speak to him.
Mr. Engelhard: Just a moment, I can hardly hear what you say when you talk so quietly.
Q. (By Mr. Rissman) I am sorry.
You say you do recall speaking to him?
A. Yes.
Q. When did you speak to him?
A. Oh, I couldn't tell you the date.
Q. What did you say to him?
A. I asked him if he was going around with application cards and he denied it.
Q. Why did you ask him, did you see him?
A. No, because I had been told he was doing it.
Q. Who told you?
A. One of the men.
Q. One of the workers?
A. Yes.
Q. A foreman?
A. No.
779 Q. Who was the man?
A. I couldn't tell you offhand either.
Q. You mean you don't remember or you can't tell us?
A. I don't remember.
Q. What did this man tell you?
A. That he was going around with application cards.
Q. How did this man happen to tell you about it?
A. He just came and told me, that was all.
Q. Did he come to you during work hours.
A. Yes, sir.
Q. What kind of work does this man do, machinist?
A. No, I think he was a helper.
Q. A helper?
A. I couldn't remember exactly.

Q. Did you reprimand him for leaving his working during work hours?

A. No.

Q. Wasn't that a violation of the company's rules?

A. A man can come and speak to me at any time, any man.

Q. Will you answer my question please?

A. No.

Q. You say it is not a violation of the company's rules?

A. No, it isn't a violation of the company's rules for men to come and speak to me at any time.

Q. Is this man in the habit of coming to speak to
780 you, to tell you about the activities of other men in the plant?

A. No.

Q. Is this the first time he had done it?

A. Yes.

Q. Tell us, what did he tell you about Joe Pemper?

A. Just exactly what I said; he said that he was handing petitions out; the man denied it, and then it dropped, there was no more to it.

Q. What else did you say to Pemper, besides ask him if he had passed out application cards?

A. When he denied it I told him it was against the rules of the shop for him to do it, and for him not to do it.

Q. Does your—Mr. Green, do you know that Joe Pemper just a short time before you spoke to him had received a raise in pay?

A. Before I spoke to him?

Q. Yes.

A. I think it was later.

Q. Later?

A. Excuse me, I give him a raise before that.

Q. Before that?

A. Then I give him a raise after that.

Q. Did you mention that raise to him at the time you asked him about these application cards?

A. I would not be positive about that.

781 Q. Let me refresh your memory, Mr. Green:

Didn't you approach Joe Pemper on April 14th, 1937 and say to him, "I am surprised at you, Joe, you have been taken care of by the company and now you are passing out C. I. O. cards"?

A. I didn't say it in those words at all.

Q. What words did you say?
A. Well, I told him he should not pass out cards on the ompany time.
Q. And didn't you say further to him, "If you must work or a union, work for our union and nobody will say a word o you"?
A. Absolutely not.
Q. What did you say?
A. Nothing like that at all, never mentioned any union t all.
Q. You are quite positive?
A. Quite positive.
Q. You said nothing about the Independent Union?
A. Absolutely not.
Q. You said nothing to him about the C. I. O.?
A. No, outside of passing the cards out.
Q. Have you ever spoken to any other employees about he C. I. O. or the Independent Union?
A. Yes, I spoke to Mr. Landrey, I have talked to Mr. 82 Landrey at different times.
Q. That was in connection with the complaint that he ad made to you?
A. Yes, sir.
Q. Do you recall—
A. The same to William Kreger; I have talked to him, e has come to me with complaints.
Q. William Kreger is one of your employees?
A. Yes, sir.
Q. Do you know he is the Amalgamated Association vice resident here?
A. I don't know what office he has, I only know he has ome to me at different times and complained about, asked o get a raise for men.
Q. You knew he was an officer of the C. I. O.?
A. I knew he was a steward, that was all, I didn't know hat office he held.
Q. Now, you know he is vice president. Do you know Mr. Larson in the Erecting-Assembly department?
A. Yes, sir.
Q. Have you ever spoken to him about C. I. O. activities?
A. I don't think it was C. I. O. activities I spoke to him bout, it was for running around the shop, I suppose.
Q. What did you say to him?

A. I told him to keep on his job and not to run around
783 the plant.

Q. How did you know he was running around the plant?

A. I saw him myself.

Q. Where did you see him running?

A. I saw him around the Erecting floor in No. 3 shop.

Q. Where was he at the time you spoke to him?

A. In No. 3 shop.

Q. On the occasion when you saw him running around or later?

A. That same morning, one Saturday morning, as I remember.

Q. Was it the same time or was it a little later?

A. I spoke to him that same day because I had seen him three or four different places where he should not be.

Q. Did you say anything about union affiliations?

A. No, sir.

Q. Didn't you say, "You had better stop this, getting the men lined up for C. I. O. meetings"?

A. No.

Q. Nothing to that effect?

A. No, absolutely not.

Q. Did you ever say anything to him about the C. I. O. or any other union?

A. No.

Q. Did Mr. Larson admit running around to different men in the assembly department?

A. He admitted that he was not where he belonged.

784 Q. Did you ask him what he was doing where he did not belong?

A. No, I saw him, and asked him what he was doing, and he said he just had gone over to talk to a man.

Q. Did you ask him what he was talking about?

A. No, I didn't.

Q. Weren't you interested?

A. I didn't ask because the men do that—I didn't ask, I seen him three times, he didn't stay on his job, but I didn't know whether he was engaged in any union activities or anything; I just saw him and I told him to stay on his job because I had a complaint from the foreman before that he was running around, but not union activities.

Q. You say, not union activities?

A. The foreman did not say, but he said he was running around.

Q. Did you ever learn that Mr. Larson was engaged in union activities?

A. No, I don't know whether he is now, to my knowledge.

Q. On the various occasions, Mr. Green, that the C. I. O. officials have complained to you that workers were soliciting membership in the Independent Union on company time, did you investigate those complaints?

A. I went to the foremen and told the foremen to investigate.

785 Q. Have you ever received any complaints that the company had been warning or threatening men about joining the union?

A. No.

Q. You never received any such complaints?

A. No.

Q. Did you know that they were doing that?

A. No, I did not know they were doing it, and I don't think they were either.

Q. Have you ever spoken to the foremen about their position with reference to union activities?

A. I have told them that they had to be neutral and not take any sides whatever.

Q. Was that in a meeting with the foremen?

A. No, individually.

Q. Do you know, Mr. Green, whether or not the company has any preference for the Independent Union as compared to its feeling for the Amalgamated Association of Iron, Steel and Tin Workers?

A. No, I don't.

Q. Have you ever consulted anybody as to whether or not the company prefers one organization to the other?

A. No.

Q. Have you ever been advised as to whether or not the company favors the Independent Union over the other organization?

786 A. No, I have been advised that they do not care which organization they belong to, as long as the men were satisfied, that is all.

Q. By whom were you so advised?

A. By Mr. Falk at one time, he said he had no preference.

Q. When was that?

A. That was sometime during these activities, some time this year.

Q. Have you ever indicated to the employees which organization would be better for them?

A. No, never at any time.

Q. Have you ever indicated to the employees which organization might be the most satisfactory for them?

A. No.

Q. If an employee were to ask you, would you venture an opinion?

A. No, I would not.

Q. How long has that been your position?

A. Ever since the union activities started, before the Works Council ended.

Q. How long before the Works Council ended?

A. A month before.

Q. Do you know the attitude of the company to labor organizations who have representatives not employed by the company?

787 A. No, I had nothing to do with that.

Q. I didn't ask you if you had anything to do with it; I asked if you know the attitude of the company?

A. No.

Q. You were not aware of it at all.

A. No.

Q. You don't know that it is the position of The Falk Corporation to not favor an outside union?

A. I don't know that for this reason, that we have got men that have been there—I have got some men working in the machine shop, one has been there 30 years who belongs to the A. F. of L.; I have got another who has been there 15 years who belongs to the A. F. of L., and two or three more belonging to the A. F. of L. have been there all of this time.

Q. Has the A. F. of L. ever attempted to deal or bargain for those men?

A. No, but these men have never been discriminated against and they have been there all the time.

Q. But their membership in the A. F. of L. has no bearing upon their work one way or the other?

A. No.

Q. Don't you know that it is the position of the Falk Corporation as announced by Mr. Falk in public addresses he has made, and in statements to the employees in your pres-

ence and otherwise, that the company does not favor labor
788 unions?

A. At that meeting you are speaking of in my presence, I was not at that meeting, I wasn't allowed to be at that meeting.

Q. What?

A. You are speaking of,—you said a meeting with the employees.

Q. At any time.

A. No.

Q. Didn't you ever see any notices or letters written by Mr. Falk where he said, "We do not favor unions"?

A. Not to my knowledge.

Q. I hand you herewith Board's Exhibit No. 18 and ask you if you have ever seen that or anything similar to it?

Mr. Engelhard: Now, that is a rather broad question. You mean he saw Exhibit 18?

The Witness: I had nothing to do with this power house.

Trial Examiner Batten: The question is, did you see that letter?

The Witness: Not to my knowledge, I didn't see this letter, it wouldn't come to me in the ordinary course of business; I didn't have anything to do with this.

Q. (By Mr. Rissman) Directing your attention to the elections that were conducted at the plant for the first representatives of the Works Council, do you recall at that
789 those elections in 1933—

A. Yes.

Q. How many elections were held in the machine shop?

A. I couldn't tell you offhand without going back to the minutes, there were so many representatives elected from the machine shop and so many from the foundry.

Q. Was there more than one election in the machine shop for the first group of representatives?

A. I couldn't remember offhand about that.

Q. Do you recall at that time just prior to an election, Mr. Harold Falk addressed the employees in the machine shop?

A. Yes, but I wasn't allowed to that meeting; that wasn't when the Works Council was inaugurated, that was at a later date.

Q. I am talking now to the meeting before the Works Council was inaugurated.

A. No.

Q. Do you recall the election?

A. That meeting you speak of in the machine shop was after the Works Council.

Q. Were there any meetings in the machine shop before the Works Council?

A. I don't remember.

Q. Do you recall that at the first election of the Works Council representatives there were quite a number of
790 votes for workers and representatives of the American Federation of Labor?

A. That wasn't at the inauguration of the Works Council as I remember.

Q. When was it?

A. It was much later.

Q. But you do recall that took place.

A. Yes, that these men put outside names on the ballots.

Q. Do you recall what was done with those ballots that had outside names?

A. I think they were thrown out.

Q. And can you indicate for us some of the names of the representatives that appeared on the outside ballots that were thrown out?

A. I think—

Q. Let me refresh—

A. —Otto Jerekovitch.

Q. Otto Jerekovitch of, the Machinists Union?

A. That was Freiddich.

Q. Jake Frieddich of the Machinists Union?

A. Those are the only two I remember; there were those two—

Q. Do you know why they were thrown out?

A. Because the Works Council was inaugurated for the shop alone, for the Falk Corporation Works Council.

791 Q. Do you know, or was it ever reported to you, or did you ever hear Mr. Harold Falk say at that time that he did not want the men to vote for outside men representatives?

A. I was not at any meeting when he made that statement.

Q. Did you ever hear he made such a statement?

A. I don't remember.

Q. Do you know, Mr. Green, if at the present time, the employees of your company in your department who are members of the C. I. O.?

A. I know some of them, I don't know all of them, I could not tell you; I know some of them because they wear buttons.

Q. How many buttons do you see displayed, can you tell us?

A. Well, I couldn't tell you, I don't count them.

Q. Did you know about the meetings that were held on April 11th and for a few days thereafter, after which the Independent Union was conceived?

A. I had nothing to do with it, I wasn't in those meetings at all.

Q. Did you know about those meetings?

A. I heard about them.

Q. What did you hear about them and from whom?

A. The old Works Council I guess got themselves together and started trying to get an independent union, that is about all I know about it.

I was excluded from those meetings, I had nothing 792 whatever to do with them.

Q. Do you know who addressed the workers at that meeting?

A. Pardon?

Q. Do you know who spoke to the workers at that meeting?

A. No, I was not there, I don't know.

Q. Were you at the last meeting of the Works Council, Mr. Green, on April 8th, 1937?

A. I think the last meeting I was at was March, the March meeting, I think, I would not be positive.

Q. Did you attend the April meeting

A. I am not sure about the April meeting; I think the last one I attended was in March.

Q. But there was a meeting in April?

A. Yes,—April was the last meeting?

Q. Yes.

A. Then I was there; I thought it was March.

Q. No, April. Now, do you recall anything that was said at that meeting with reference to the necessity of giving up the Works Council?

A. The only thing they said, the Works Council would be outlawed.

Q. Who said that?

A. I think we got some advice from somewhere that would be outlawed, like the Harvester was outlawed.

Q. You are referring to the International Harvester 793 Company?

A. Yes.

Q. What else was said?

A. I don't know anything else that was said that I can remember relative to that.

Q. Let me refresh your recollection, and you tell me if you remember. Do you recall at that time it was said that the Works Council would be outlawed and it would be necessary for the men to have some kind of representation to take its place, and that it would be advisable to have an independent union rather than the A. F. of L. of the C. I. O.

A. That may have been said, they may have said that, something like that, but I don't recall the exact words.

Q. Not the exact words, but something like that.

A. There may have been something like that said.

Q. Do you recall whether or not the employees who attended these meetings on April 12th, when they were going to organize this Independent Union, were paid for the time they were away from work?

A. Yes, I heard about that, that they were paid for the time they were away from work and then it was deducted from their wages later.

Q. How much later was it deducted?

A. The next pay day I guess.

Q. Do you know why it was deducted?

794 A. Because it is illegal to pay those men, the way I understood it.

Q. They were paid the regular hourly rate the same as they had previously been paid for attending Works Council meetings?

A. Yes.

Q. Do you recall any complaint you received from the men because the amounts were deducted from the later pay envelopes?

A. Any complaints?

Q. Yes.

A. No, I didn't hear any complaints.

Q. Did they complain to the foremen?

A. I didn't hear of any.

Q. If any of your foremen, Mr. Green, were engaged in C. I. O. activities or in activities in favor of the Independent Union of Falk Employes, that is contrary to the orders you issued to them, was it ont?

A. Yes.

Q. They were doing it on their own initiative?

A. Yes.

Q. And they were doing it in violation of the rules announced by the company?

A. Yes, sir.

Q. But you don't know whether or not the foremen
795 did engage in any such activities, do you?

A. To my knowledge they did not.

Q. They didn't report any such activities to you?

A. No.

Q. (By Mr. Lamfrom) Nor did anyone else report such activities on the part of the foremen, reported to you?

A. No.

Q. (By Mr. Rissman) What action—pardon me, what penalty would there be to foremen who had engaged in such activities?

A. It is a pretty hard question to answer, I don't know.

Q. Just talk to him about it, would that be all?

A. How?

Q. You would just talk to him about it and tell him to stop it, cut it out?

A. That is about it, warn him about it.

Q. "Don't let it happen again," something of that sort?

A. Yes.

Q. (By Mr. Lamfrom) Suppose that after you warned him, that he would repeat those activities again and again, what would you do?

A. Fire him.

Q. (By Mr. Rissman) These meetings of the organization of the Independent Union were held on company property and on company time, were they not?

Mr. Engelhard: Just a moment, there is no evidence
796 here that the meetings held, he does not know what they were. He has heard that they might have been held for such purposes, but there is no evidence here to show what these meetings were held for, and I don't think that is a fair question to this man, a question about which he confessedly does not know anything.

Trial Examiner Batten: I think you might ask him whether or not he knows they held meetings. He can answer yes or no.

Mr. Rissman: He has testified there were meetings held.

Trial Examiner Batten: Ask him if he knows what the meetings were held for.

The Witness: I was not at the meetings.

Q. (By Mr. Rissman) These meetings that were held on April 12th, after the Works Council had expired, were they held on company property?

A. Yes.

Q. During working hours?

A. That I could not say.

Q. But you know that the men who attended them were paid on a regularly hourly—paid on their regularly hourly rate?

A. Yes.

Q. (By Mr. Lamfrom) Were those men to whom the money was paid on the regular hourly rate, was it later deducted?

A. I did not get that.

797 Q. You testified these men were paid, the men that attended meetings, were paid their regular hourly rate without deduction. Were those same men to whom the money was paid, was it later deducted?

A. Yes, that is the way I understood it.

Trial Examiner Batten: While there is a lull in the proceedings, Mr. Goldberg, I think I owe you an apology. I find your substance of your recollection of the testimony this morning was correct.

Mr. Goldberg: You don't have to apologize, I am wrong quite often on these things.

Trial Examiner Batten: Of course I would not admit I am often.

Mr. Lamfrom: This gentleman just came in with a subpoena in the Harnischfeger matter—

Trial Examiner Batten: Off the record.

(Discussion outside the record.)

Trial Examiner Batten: I believe we will recess for a few minutes.

(A short recess was taken.)

Trial Examiner Batten: I believe we will proceed, gentlemen.

Mr. Rissman: May I have the last question and answer read?

(The question and answer were read.)

798 Q. (By Mr. Rissman.) Mr. Green, are you in the practice of discussing with employees the union problems and union affairs?

A. No.

Q. Have you ever had any such discussions in recent months?

A. I don't think so.

Q. Have you ever spoken to any officer of the C. I. O. union

regarding the strength of their union, the purpose of it and things of that sort?

A. No.

Q. Have you had any discussions or conversations with Mr. Landrey or Mr. Kreger with reference to their union affairs?

I mean now in the sense of friendly argument with them or debate with them personally.

A. I possibly have, I would not swear to it, I possibly have.

Q. And in those discussions, you undoubtedly expressed your opinion as to what you thought of the union and its effectiveness?

A. Possibly I did.

Q. Do you know, Mr. Green, what employees in your plant are eligible for membership in the Independent Union of Falk Employees?

A. As far as I understand all employees outside of foremen and inspectors are eligible.

Q. Did you—do you recall any conversation with Mr. 799 Landrey shortly after the application cards for the Independent Union appeared, where Mr. Landrey asked your opinion as to whether or not it was permissible to sign up apprentices in the Independent Union?

A. I think he did ask me that.

Q. Did you express your opinion?

A. I told him, I think, that those apprentices were under contract and I did not think they would be eligible in any union.

Q. Did you ever discuss with Mr. Landrey the wearing of union buttons in the plant?

A. The other day I did. He asked me why I didn't allow the men to wear buttons, and I told him I had nothing to do with them wearing buttons, for all I cared, whether the Independent, the A. F. of L. or any other kind of button. I have told Mr. Landrey that and I have told him that more than once.

Q. Did he make any specific complaint about buttons?

A. He said the men were ascared of wearing buttons.

Q. Did he mention which men?

A. No, he didn't specify which men; he said "certain men" he didn't say which men; he just said "some of the men."

Q. Do you know what action or statement by you or your foremen caused him to complain about the wearing of buttons?

A. The only thing I know is that Mr. Landry himself, about the wearing of buttons, that is all. There wasn't
800 any foremen that caused them not to wear buttons.

Q. You say Mr. Landrey objected to them wearing buttons?

A. He wanted them to wear buttons, and he said the men were scared of wearing buttons.

Q. Do you know if the men have any reason to be scared to wear buttons?

A. I don't know of any reason whatever.

Q. Do you know if, as a matter of fact, they are scared to wear their buttons?

A. I don't know, I only know what Mr. Landrey told me.

Q. Have you any reason to doubt him?

A. Pardon?

Q. Do you doubt what Mr. Landrey told you?

Mr. Lamfrom: I object to that, if the Examiner please.

Trial Examiner Batten: The objection is sustained. If he does not know anything about it, I don't presume he is in a position to state.

The Witness: I can't tell that.

Q. (By Mr. Rissman.) Do you believe all of the things Mr. Landrey tells you?

A. Some of them.

Q. Is this item of buttons one of the things you believed or one of those you do not believe?

A. I believed what Mr. Landrey told me about that, yes.

Q. Mr. Green, do you feel, as superintendent of the
801 plant, that an employee who joins a labor organization other than the Independent Union, is displaying any disloyalty to his employer?

A. I would not say that.

Q. Do you think—do you feel that it indicates a lack of faith in his employer?

A. No.

Q. In your conversations with Mr. Landrey or other officers of the C. I. O. organization, have you ever expressed any opinion as to men who joined labor organizations?

A. I don't remember ever having done it.

Q. You would not say that you have not expressed an opinion, you just don't remember?

A. Well, I have argued with Mr. Landrey and Mr. Kreger at different times, I wouldn't say. We have argued back and

forth at different times and I wouldn't say what I told him, many times just like that button episode.

Q. And you have argued also on the subject matter of labor unions?

A. Shop affairs and things like that.

Q. Shop affairs and current affairs, have you not, and you have argued also about the State Labor Relations Board?

A. No, that didn't enter into the picture; I don't think he has ever argued the State Labor Board.

Q. Don't you recall ever expressing any opinion
802 about the members of the State Labor Board, stating that you believed they were communistic?

A. I may have said that.

Trial Examiner Batten: Mr. Rissman, might I ask, suppose he did, what has that got to do with this case?

Mr. Rissman: It indicates, if the Examiner please, the superintendent's attitude towards labor organization, or any organization that seeks to persist—

Trial Examiner Batten: Of course, granting that he has a very hostile attitude towards labor unions, the important thing here is whether or not in the conduct of his job at this plant he showed his prejudice by things which he did and said and acts which he committed in the plant, isn't it?

Mr. Rissman: I have shown his prejudice and the witness denied acts alleged to have been committed by him, and I am merely establishing the basis for showing Mr. Green's acts by other witnesses.

(Further discussion outside the record, as previously directed.)

Mr. Rissman: If the Examiner please, I have shown all the personal views that I intend to show.

I have no further questions.

Mr. Engelhard: We will reserve Mr. Green's further testimony until we get into our case.

Mr. Rissman: That is the same situation we had pre-
803 viously.

Trial Examiner Batten: Well, Mr. Engelhard didn't say "reserve cross examination", he said "reserve further examination".

Mr. Engelhard: Well, I meant of course that any cross examination that is to be engaged in, we will engage in the cross examination at that time.

Mr. Rissman: Well,—

Trial Examiner Batten: Have you any objection to that procedure, Mr. Rissman?

Mr. Rissman: Not in addition to that I expressed at the conclusion of Mr. Falk's direct examination.

Trial Examiner Batten: Now, I wish you would restate it so that I thoroughly understand it.

Mr. Rissman: I object to the reservation of cross examination of any witness, inasmuch as the right to cross examine may either be exercised at this time or be waived at this time. It is known, as counsel states, that he will examine all of these witnesses when he puts in his defense, and at that time he may ask him any questions that are material to the issues.

Mr. Engelhard: This is only with reference to Mr. Falk and Mr. Green. We don't propose to follow that procedure with other witnesses.

804 Trial Examiner Batten: The Examiner will make the same ruling as this morning, that as to those witnesses who may technically be considered to be respondent's witnesses, you may add to such examination you make at the time you present your matters, but it will only apply to those witnesses who might be technically considered respondent's witnesses.

Mr. Goldberg, do you wish to cross examine?

Mr. Goldberg: Yes.

Cross-Examination.

Q. (By Mr. Goldberg) Are you superintendent of the entire plant?

A. No, just the machine shops.

Q. You don't know anything that goes on in the power plant then, do you?

A. No.

Mr. Goldberg: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Goldberg: Just one other question.

Q. (By Mr. Goldberg) Has there been any organization work in the machine shop by the A. F. of L. union that came to your attention prior to 1937?

A. No.

Mr. Goldberg: That is all.

Trial Examiner Batten: I would like to ask one question.

805 Q. (By Trial Examiner Batten) The two men referred to this morning that were operating steam engineers, do either of those men come under your jurisdiction?

A. No.

Q. Well, the man that operates the stationary equipment, where is that equipment located, do you know?

A. That is in the power house.

Q. That is in the power house?

A. Yes, sir.

Q. And the man who operates moving crane, where is that located?

A. That is around the yards, on the derricks around the yards.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Falk: Mr. Batten. I may be able to clarify your mind. The machines are like a switching locomotive with a derrick, they left things up and at the same time they are mobile about the yard.

Mr. Goldberg: Whom are they responsible to, who is their direct superior?

Mr. Falk: I think they come under the foundry management, Mr. Pritzloff.

Mr. Rissman: Mr. Hydar please.

Trial Examiner Batten: Proceed.

806 VICTOR J. HYDAR, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Rissman.

Q. Will you state your name please.

A. Victor J. Hydar.

Q. What is your position, Mr. Hydar?

A. Employment and personnel work.

Q. Of the Falk Corporation?

A. Yes, sir.

Q. And how long have you been employed by the Falk Corporation?

A. In all since September, 1922.

Q. How long have you been in your present position?

A. I have been responsible for employment and personnel work for about the last four years.

Q. And in a short statement, can you tell us what that responsibility is, just what are your main duties around the plant?

A. The employing of people for work in the shop, advising them as to their rights under group insurance, attending to their claims under group insurance, and attending to any other personal matters that they may wish to take up with us and the supervision of apprentices.

807 Q. Prior to your present position in the plant, what work did you do there?

A. Apprentice supervision.

Q. How long did you do that work?

A. From 1926 until about 1932 or 1933.

Q. And your present position, the one you have occupied for approximately the last four years, is generally recognized as a management position?

A. I suppose so.

Q. You were secretary of the Works Council?

A. I was.

Q. Appointed by the company?

A. Yes.

Q. What were your duties as secretary of the Works Council?

A. Merely to record the proceedings of meetings, see to it that the minutes were written up, and distributed, and take care of any correspondence incident to the business of the Works Council.

Q. Tell us the procedure with reference to writing up the minutes of the Works Council?

A. Notes were taken while the meeting was in progress, and they were dictated after the meeting.

Q. By whom?

A. By myself, and then sent out to a printing concern where they were mimeographed and distributed among the men.

808 Q. During all the time that you were secretary, did you at any time consult with Mr. Falk or any other supervisory official of the plant as to the contents of the minutes before they were printed?

A. I perhaps did on one or two occasions.

Q. What was the nature of the changes, if any, that were made in the minutes after such consultation?

A. I don't recall any changes that were made, as to the contents of the minutes.

Q. What was the purpose of such consultation regarding the minutes?

A. Merely that the company's views, as they wished to express them, and as provided for in the by-laws of the Works Council, could be included.

Q. Were there ever any changes, additions or corrections to the minutes that were made between the time of the meeting—at the time of the minutes being recorded and the time the minutes were published?

A. Offhand I don't recall.

Q. Would you say that never occurred?

A. I would say that it did not occur with reference to any important matters.

Q. We are not concerned at the present with whether or not the changes were important; we are concerned now with whether or not there were ever any changes of that na-
809 ture, important, or unimportant.

A. You mean by that, change in the minutes, in the contents of the minutes?

Q. I mean a change in the minutes from the time—an addition, change or correction from the time of the meeting until the time they were published?

A. I don't think there were ever any changes or additions.

Q. Or corrections?

A. Corrections possibly with reference to the wording of a statement here and there.

Q. Were there ever any corrections suggested by Mr. Falk or anybody else in a supervisory capacity of the company?

A. As to wording, yes.

Q. Now, Mr. Hydar, how long a time usually elapsed between the meeting and the publication of the minutes?

A. Oh, from five or six days to two weeks.

Q. Never longer than two weeks?

A. There may have been one or two occasions that run a little over, but on the average, about that.

Q. Did you know Anton Kinch?

A. I do.

Q. How long have you known him?

A. A number of years.

Q. You knew him during all the time of his employment in the company?

810 A. I don't know whether I knew him all during the time of his employment with the company, at least I don't recall.

Q. At least the last two or three years.

A. I knew him slightly in the last two or three years, yes, sir.

Q. You knew him during the time that he was a member of the Works Council?

A. Yes, sir.

Q. To what extent did you participate in suggesting to Mr. Kinch that he be a member of the Works Council?

A. Merely that he objected to accepting the nomination of the Works Council, and I spoke to him and asked him to reconsider and to accept the nomination.

Q. Why were you interested in having Mr. Kinch accept the nomination?

A. Merely because he had been nominated by a fair majority and we wanted him to take it.

Q. When did you speak to him in behalf of the nomination?

A. I believe after the nomination; I don't recall ever speaking to him about any such matter before.

Q. Do you recall what his objections were to accepting the nomination?

A. I do not at the moment.

Q. Do you recall any reasons you advanced in urging him to accept the nomination?

811 A. Reasons?

Q. Yes.

A. No, not that I remember.

Q. Did you consult with anybody with reference to Mr. Kinch's nomination other than Mr. Kinch?

A. Yes, I possibly have talked with Mr. Green and Mr. Falk.

Q. And why would Mr. Green and Mr. Falk be interested in Mr. Kinch's nomination as a representative of the employees?

A. In no other way except that if he had not accepted the nomination we would have been put to it to conduct another nominating ballot.

Q. Under the constitution, without refering to it, can you tell us in a general way whether or not any employee was consulted before he was nominated as to whether or not he chose to be nominated?

A. I do not know whether any were consulted about it.

Q. Was this the first time that any employee had been nominated and had refused to accept the nomination?

A. I am not certain, but I would say it was not the first time.

Q. On other occasions if there were any times, did you also interview the nominee?

A. In every instance we did.

Q. And urge him to accept the nomination?

A. As a rule, yes; I would say always.

812 Q. Do you recall what conversation you may have had with Mr. Falk or Mr. Green regarding Mr. Kinch's nomination?

A. No, I don't recall.

Q. Do you recall whether or not you were successful in convincing Mr. Kinch that he should accept the nomination?

A. I don't recall whether I particularly was successful in the matter or not.

Q. At any rate, after you spoke to him he changed his mind and did accept?

A. Yes, sir.

Q. And he was elected.

A. Yes.

Q. Did the nomination amount to an election or was there a separate ballot?

A. No, a separate ballot for the election.

Q. Do you recall whether or not Mr. Kinch was an active representative at the Works Council meetings?

A. What do you mean by "active"?

Q. Did he participate quite fully in the activities of the Works Council?

A. He took an active part in the discussions, yes.

Q. And he made various proposals?

A. Yes.

Q. And on behalf of the members he represented?

A. I think so.

813 Q. And he engaged in debates with other representatives on questions where he disagreed with them?

A. He did.

Q. Or where he supported them.

A. Yes.

Q. He did not take his duties lightly, or as a matter of course, did he?

A. No.

Q. Do you believe, as secretary of the Works Council, and as personnel man, who is able to judge the employees of the company that Mr. Kinch was sincere in his activities as a member of the Works Council?

A. I think he was.

Q. In these Works Council activities, do you recall Mr. Kinch quite frequently differed with the employer or the employer management representatives of the Council on such questions as increases, earnings of the company, ability of the company to pay bonuses and things of that sort?

A. As I recall it he was at variance with the policies, most of them.

Q. What constituted his variance with his fellow employee representatives?

A. Oh, I don't remember the details.

Q. Generally I mean.

A. Merely that—well, they just didn't always agree,
814 that was all.

Q. And referring back to the conversation with Mr. Kinch, where you urged upon him the acceptance of the nomination, as a representative, don't you recall he said, one of the reasons he gave for not accepting or not wanting to be a representative, was because he didn't want to be a sheep and go along like other employee representatives did?

A. I believe he did say some such thing.

Q. Don't you recall that he also objected because he said the employer representatives did not have any independent thought or action on the matters taken up?

A. I don't recall that statement.

Q. Don't you recall he said if he did accept the nomination he wanted it specifically understood that he was to act as his free agent and he would not compromise his principles as he saw them because he was not afraid of losing his job?

A. I believe he did say some such thing.

Q. And he did, as a matter of fact, very vigorously voice his protest against the haphazard manner of other employee representatives in passing upon matters that came up for discussion?

Mr. Lamfrom: Now, just a minute, I object to the form of that question because there is nothing here in the evidence to show that the other employees passed upon matters in a haphazard manner, nothing at all.

815 Mr. Rissman: Mr. Hydar is qualified—

Mr. Lamfrom: Just a minute, Mr. Rissman, your assumption is not warranted by any evidence that is here.

Trial Examiner Batten: I think, Mr. Rissman, if you will nquire of this witness as to what statements Mr. Kinch nade—

Mr. Lamfrom: Yes.

Trial Examiner Batten: —with respect to that matter, let im repeat Mr. Kinch's statement, it would be a much more atisfactory way.

Mr. Lamfrom: Certainly.

Trial Examiner Batten: (Continuing) Of arriving at it.

Q. (By Mr. Rissman) If the witness makes those statements I will be glad to have him repeat them for us.

A. I don't recall the statements definitely, but I do remember Mr. Kinch stated that he would act individually, on his own initiative in matters.

Q. Now, referring to Mr. Kinch's statements at these various meetings, you say he was in disagreement with his fellow employee representatives as well as management representatives, was he not?

A. Frequently.

Q. Do you recall and can you tell us what the form—what some of his statements were that indicated disagreement with other employee representatives?

816 A. My recollection is merely a general recollection, that he would stand up for what he thought were his principles, but as to individual statements or individual instances, I have no recollection.

Q. Do you recall that he did protest to the other employee representatives that they were not adopting a vigorous attitude in presenting the claims of the men they were supposed to represent?

A. I don't remember that he ever made any such statement in a Works Council meeting.

Q. Something similar to it?

A. Or anything along those lines, he may have, but I don't remember that he did.

Q. Do you recall also that one of his recurring protestations was to the amount of time spent by the Works Council in discussing canteen affairs?

A. There were protests of that sort, whether by Mr. Kinch or others, I don't remember.

Q. But they were from employee representatives?

A. From both sides.

Q. From both sides?

A. Yes.

Q. In these protests that Mr. Kinch made about the activities of the Works Council and his disagreement, do you recall that he had any particular persons, fellow employee rep-
817 resentatives who felt as he did about the work of the Works Council?

A. Would you state that question again?

Mr. Rissman: Read the question please.

(The question was read.)

A. I don't recall that he did.

Q. (By Mr. Rissman) What was the tenor of the meetings of the Works Council following the discharge of Mr. Kinch?

Mr. Lanfrom: Now I object to that, if the Examiner please, it does not mean anything, does not mean anything. What tenor? How can this witness answer?

Mr. Rissman: If the witness does not understand—

Trial Examiner Batten: Well, I think the form of the question might be, was Mr. Kinch—the matter of Mr. Kinch's discharge discussed at any Works Council meeting thereafter.

Mr. Lamfrom: Well, that is another matter altogether.

Trial Examiner Batten: And if so, what was said and who said it.

Q. (By Mr. Rissman) Can you answer the Examiner's question?

A. I don't remember that Mr. Kinch's discharge was ever mentioned in any subsequent Works Council meeting.

Q. Was there a representative elected to succeed Mr. Kinch?

A. I think there was.

Q. Do you know who it was?

818 A. I was just trying to recall.

Q. (By Mr. Lamfrom) Your records would show that, would they not?

A. The records would show it; I can't remember who it might have been right now.

Q. (By Mr. Rissman) Do you not know, Mr. Hydar, as a matter of fact, that after Mr. Kinch's discharge, the Works Council meetings had a more orderly and more regulated method of procedure than they had when he was there making his protests?

A. I don't think there was ever any change, any change in the character of the meetings, either before Mr. Kinch came to the Works Council or after he was discharged.

Q. (By Mr. Lamfrom) Was there any change in the character of the matters discussed?

A. I don't think there was.

Q. (By Mr. Rissman) After his discharge was there any other reclassification proposal submitted

A. What do you mean by "reclassification proposal"?

Q. Are you familiar with the proposal submitted by Mr. Kinch?

A. Oh, yes.

Q. Before his discharge?

A. Yes, sir.

Q. Was there ever a similar proposal introduced after he was discharged?

819 A. I think not.

Q. Were there ever any similar questions taken up after his discharge?

A. The reclassification, no.

Q. Or any question, of significant importance, or of similar importance to the employees?

A. Yes, I think so.

Q. You refer now to the request for an increase

A. Increases, bonuses, vacations with pay, and things of that sort.

Q. All of those matters come up—

Mr. Lamfrom: Let him finish.

Mr. Rissman: I am sorry.

The Witness: As I recall it.

Q. (By Mr. Rissman) They come up after his discharge?

A. According to my recollection, yes, sir.

Q. Were you present at the final meeting of the Works Council on April 8th, 1937?

A. I was present at the final meeting, yes.

Q. Do you recall the statements there with reference to the necessity of disbanding the Works Council?

A. Something was said to the effect that the Works Council would be disbanded.

Q. Do you recall who said that?

A. I don't recall who made the statement.

820 Q. Would your minutes have a record of that?

A. I don't remember whether that went into the minutes or not.

Q. What would be the reason for excluding it from the minutes?

A. None whatever.

Q. What?

A. There would be none except that just may have been made as a statement by someone briefly.

Q. Would not the disbandment or abandonment of the Works Council be a matter of sufficient importance to be included in the minutes?

Mr. Engelhard: Excuse me, you are not talking about disbandonment, you are asking him whether any statements were made about disbandonment.

Trial Examiner Batten: What was the question?

(The question was read.)

Q. (By Mr. Rissman) Or any discussion about it.

Mr. Engelhard: Now I object to that question because it is in the alternative, and it is quite important, bearing in mind the distinction between discussion or proposal to abandon and the Council's action, corporate action taken by the Council on the disbandonment, those are two different things.

Mr. Rissman: What is the distinction?

821 Mr. Engelhard: How?

Mr. Rissman: What is the distinction?

Mr. Engelhard: Well, the distinction is, one requires action and the other is a mere statement that they propose or request.

Trial Examiner Batten: As I understand the question, the question is—let me ask you this question:

Q. (By Trial Examiner Batten) Was there any official action taken at the last meeting with respect now to the discontinuance of the Works Council?

A. There was not.

Q. (By Mr. Rissman) Was there any discussion as to such action?

A. There was not.

Q. Was there any discussion with reference to the necessity of abandoning the Works Council because it is now outlawed and illegal?

A. There was no discussion.

Q. Was there any statement?

A. There was a statement I think to the effect that the Works Council would be disbanded.

Q. Well, Mr. Hydar, let's not draw any distinction between "statement" and "discussion". You know what I meant.

Now, who made the statement?

A. That I don't remember.

822 Q. Was it an employee representative or a management representative?

A. I don't know.

Q. What else was said in that statement if anything, about the continuation of a representation plan?

A. Nothing that I remember.

Q. Was anything said with reference to the necessity of establishing an independent union?

A. Not that I recall.

Q. Do you recall that there was no such statement made or you don't just remember if there was?

A. I recall that there was no such statement.

Q. When was the first time that you heard the Independent Union was being organized or was going to be organized?

A. Oh, about the last week in April.

Q. What was that date?

A. About the third or last week in April.

Q. When and how did you hear about it?

A. I merely heard it as a statement from somebody, I don't remember; it was in the course of ordinary conversation.

Q. Did you ever participate in any activity in connection with the creation of a new organization to take the place of the Works Council?

A. I did not.

Q. Did you ever attend any meetings of a group of em-
823 ployees called for the purpose of creating a successor to the Works Council?

A. I did not.

Q. Or creating any type of organization?

A. I did not attend any meetings of any employees subsequent to the last meeting of the Works Council.

Q. What activities did you engage in subsequent to April 8th, 1937 in connection with any organization of employees?

A. None whatever.

Q. Directing your attention to April 12th, 1937, on Monday, do you recall at that time going to the home of Mr. Landrey?

A. I do.

Q. What time of day was it?

A. It was in the forenoon, I would say about eleven o'clock.

Q. Was it on personal business or business connected with The Falk Corporation

A. It was on business connected with the company, or The Falk Corporation.

Q. Mr. Harold Landrey had formerly been a member of the Works Council?

A. Yes.

Q. What was the nature of your business with Mr. Landrey at the time of your visit to his home on April 12th, 1937?

A. I had been asked by someone to have him report at a meeting at 12:30, I believe that day.

824 Q. By whom had you been advised to ask him?

A. Some employee or former member of the Works Council, I don't remember.

Q. When you say "former employee" you mean an employee who was a former member?

A. Employee representative.

Q. Are you in the habit of running errands for employee representatives of the Works Council?

A. I had done that, yes.

Q. Did you know what kind of meeting was being called?

A. I did not.

Q. Did you inquire?

A. No.

Q. As secretary of the Works Council, would you have known if it were a meeting of the Works Council?

A. Secretary of the Works Council, I would have known it if it were a meeting of the Works Council, yes.

Q. And this activity of yours, occupying yourself in going to Mr. Landrey's home in the middle of the morning of April 12th, 1937 was not in connection with your official duties as secretary of the Works Council?

A. Well, I would say it was because as secretary of the Works Council I had done similar things up to that time.

Q. Was this a meeting of the Works Council that was scheduled for 12:30?

825 A. Not the Works Council alone, it was to be Works Council employee representatives, past and present.

Q. Do you know the purpose of the meeting?

A. I do not.

Q. Why did you participate in rounding up the employees for that meeting if it was not an activity of the Works Council?

A. Well, I wouldn't say it wasn't an activity of the Works Council.

Q. Then was it an activity of the Works Council?

A. I suppose that it was.

Q. But it was not for a meeting of the Works Council?

A. The employee representatives in the Works Council had always been given the privilege of getting together on

occasions without any of the employer representatives present and without either the chairman or secretary being present.

Q. Why was it necessary—was it necessary for this employee to have you advise Mr. Landrey rather than this man advise him himself?

A. Because there had been times prior to that, that I had done exactly the same thing.

Q. When?

A. At times when such meetings of the Works Council, or of the employee representatives of the Works Council were held, I was asked to notify the members, and on occas-
826 sions I went to their homes when they were not available at the plant for notification.

Q. On those occasions you always knew you were calling a meeting for the Works Council or meeting of employee representatives of the Works Council, did you not?

A. Yes, sir.

Q. Did you ever run errands for employee representatives of the Works Council for any other purpose other than your work in connection with the Works Council?

A. No, I don't think I ever did.

Q. How?

A. No.

Q. When you came to Mr. Landrey's home did you find him in?

A. No.

Q. Did you speak with Mrs. Landrey?

A. I did.

Q. What message did you leave with her?

A. I asked her where Mr. Landrey was and she told me where I might find him.

Q. Did you proceed to that place?

A. I did, and found that he was not there, and so I went back to the home and told her to tell him he was asked to come to that meeting.

Q. Did you state to her the purpose of the meeting

A. I don't think I did.

827 Q. How?

A. I don't think I did; I did not know the purpose of the meeting.

Q. When you were asked by this Works Council representative to contact Mr. Landrey you said you did not inquire the purpose of asking Mr. Landrey to come to the shop?

A. I did not.

Q. Who was this individual, do you recall?
A. No, I don't.
Q. Did you contact any other persons to come to the shop for this meeting?
A. Mr. Landrey was the only one at whose home I called. The others were in the plant, and a written note was sent to them, as I remember it.
Q. Who wrote the note?
A. I believe I did.
Q. What did the note say?
A. Merely that there would be a meeting at 12:30 on that particular day.
Q. A meeting of whom?
A. I dont' know as I put in the note a meeting of whom.
Q. Did it state the purpose of the meeting?
A. No, it didn't.
Q. Did any of the employees at that meeting ask you what the purpose of the meeting was?
828 A. I don't recall that they did. The notification of most of them to attend was taken care of by notes or by other methods; there were only a very few that I contacted or that I notified of it at all.
Q. When this employee representative of the Works Council asked you to notify Mr. Landrey, did you know whether or not he was calling a meeting of the C. I. O. delegation?
A. I did not know that he was calling a meeting of any delegation.
Q. Is it customary for you to invite members to meetings in the shop, the purpose of which you do not know?
A. It has been.
Q. You refer now to the meetings you have called for the Works Council?
A. Yes.
Q. Have you ever called any meetings other than those of the Works Council? That is, with the exception of this one of April 12th?
829 A. I beg your pardon, have I called any meetings other than those of the Works Council with the exception of this one of April 12th?
Q. Yes.
A. No, the Works Council meetings and this one of April 12th, which as I said, was Works Council employee representatives, were the only ones.

Q. Were there any employees at this meeting of April 12th, 1937 who were not former Works Council representatives?

A. If there were I don't know it.

Q. You don't know whether it was limited in that respect or not?

A. I don't know whether it was limited or they had others.

Q. Who asked you to prepare the notice to be send around to the men in the shop calling them to this meeting?

A. That I don't recall either. It was, I think, the same individual who asked me—in fact, I was not asked specifically to go to Mr. Landry's home.

Q. Well, you were asked to locate him.

A. I was asked to notify these men and I had reached the others in the plant, and Mr. Landry had a car of his own, or he was gone—

Q. (By Trial Examiner Batten) Where was this request made of you, where did this individual request you to do that?

A. Why, whether he came to my office or whether he
830 met me out in the shop, I don't recall.

Q. How many names did he give you to get in touch with?

A. None at all, he merely said "past and present Works Council members".

Q. Well, you haven't any recollection of where he contacted you, or who it was?

A. I have no recollection of who, or just exactly the specific place of contact, no.

Q. What time of day did he contact you?

A. That I don't know offhand.

Q. What day did he contact you with respect to April 12th, the day before or two days?

A. What was April 12th?

Mr. Rissman: That was Monday.

The Witness: Monday.

Mr. Rissman: Yes.

The Witness: I think it was the Friday previous.

Q. (By Trial Examiner Batten) In other words, that would be on the 9th, is that right?

A. Yes.

Q. April 9th?

A. Yes.

Q. Was it during working hours that he contacted you?

A. Possibly, I don't remember exactly.

Q. What hours that day were you around the plant
831 other than working hours?

A. I am always—almost always at the plant during the noon hour.

Q. You have no recollection of whether it was during working hours or noon hours?

A. I do not.

Q. You have no recollection who it was?

A. I do not know.

Q. Or where he contacted you?

A. No, I don't.

Q. Or what he said other than what you have testified to?

A. Just that.

Q. (By Mr. Rissman) It couldn't have been the noon hour on Monday, could it, because you appeared at Mr. Landry's home at about eleven o'clock?

A. No, it couldn't have been the noon hour Monday.

Q. Do you recall if the man who asked you to do these things is at the present time an officer, holds any office in the independent union of Falk Employees?

A. No, I have no recollection as to who the man was; I would not be able to tell you.

Q. None of the employees inquired from you the purpose of the meeting?

A. Not that I remember.

Q. What arrangements were made with the foremen
832 of these men so called to the meeting, to allow these men to be absent from their work?

A. I do not know because ordinarily those arrangements are made by the men directly with their foremen.

Q. Now, if these men had gone to their foremen and said, "I am going to a meeting", would they have to tell their foreman what kind of meeting it was?

A. I am sure I wouldn't know what it was, I don't know whether they would or not.

Q. Do you know if the foremen knew anything about this meeting?

A. No, I don't.

Q. About how many people were notified altogether to attend?

A. I personally had to do the notification of, oh, perhaps half a dozen at the most.

Q. And those half a dozen were from as many different departments?

A. I believe so.

Q. And those half dozen from as many different departments were under the supervision of six different foremen?

A. Not necessarily, there may not have been six different departments or as many different departments as there were men.

Q. In other words at the plant one foreman may cover
833 more than one department?

A. Yes, sir.

Q. (By Trial Examiner Batten) Do you remember the names of the men you notified besides Mr. Landry?

A. I am not sure that I do recall.

Q. Do you recall any of them?

A. You mean notified for that particular occasion?

Q. Yes.

A. I don't remember now any of them specifically; I remember Mr. Landry's instance because I had to go to his home.

Q. (By Mr. Rissman) How far is Mr. Landry's home from the plant?

A. Not very far.

Q. Well, tell us how many blocks or miles or whatever it is.

A. Oh, about, let's see—

Q. Did you walk around there?

A. 25. I drove.

Q. About 25 blocks?

A. About 25 blocks perhaps.

Q. About three miles?

A. Possibly about that.

Q. How far was this second place you visited from his home, you said you looked for him at some other place?

A. About a block and a half from his home.

834 Q. Do you recall where that place was?

A. Yes.

Q. Do you recall the name if it has a name?

A. I don't recall the name of it.

Q. Where is it located?

A. It is located on South Sixth Street.

Q. And what other?

A. I think just south of National Avenue.

Q. But you cannot recall for us the name of the man who sent you on this errand?

A. No.

Q. Do you know what occurred at this meeting?
A. I do not.
Q. Did you attend it?
A. No, I did not.
Q. Why didn't you attend?
A. I just had not been asked to come in.
Q. You attended all the Works Council meetings without any special request, did you not?
A. Yes, regular Works Council meetings and special Works Council meetings.
Q. You did not attend this meeting because you knew it was not a Works Council meeting?
A. I did not attend this meeting nor did I attend any of the caucusses, if you wish to call them that.
835 Q. I am talking about this meeting.
Mr. Engelhard: Let the witness finish.
Mr. Rissman: Read the question, please.
(The record was read.)
Q. (By Trial Examiner Batten) What is the situation with reference to caucusses?
A. That is the point I mentioned a while ago, that the Works Council employee representatives had always the privilege of meeting together in their own gatherings without the presence of any employer representatives or chairman or secretary; because I refer to that as caucusses, I did not any time attend any of those except that I was specifically requested one day to come out and answer a question for them.
Q. How did you know this meeting of April 12th was only for employees?
A. I was told it was for past and present employee representatives of the Works Council.
Q. And that was the individual that you cannot recall who told you that?
A. Yes.
Q. Now, these notices you prepared, who took those notices and distributed them out through the plant for you to these men that were to come to this meeting?
A. We have a messenger route and they were sent out on that to the foremen of these men who I suppose handed
836 them to the men.
Q. (By Mr. Rissman) At these previous caucus meetings that you speak of you knew every time there was a caucus meeting, I mean when you knew of the meeting you knew whether it was a regular meeting or a caucus?

A. If a meeting to notify the men?
Q. Yes.
A. Yes, surely.
Q. If this were a caucus meeting would former Works Council men be allowed to attend it or would it be limited to the then only present Works Council members?
A. There never was any limitation put on any of those meetings.
Q. Would a man who was not a representative of the Works Council be allowed to attend a caucus meeting?
A. Yes, and in fact they did at times.
Q. Do you recall any time when that occurred other than April 12th?
A. I do know that it occurred; I don't recall the specific instances or dates.
Q. It was a regular caucus meeting?
A. I believe so.
Q. Was that employee paid for his time away from work?
A. That I could not answer.
Q. Did you ever find out what occurred at this meeting 837 of April 12th?
A. I believe not.
Q. Aren't you sure?
A. I would say I never have found out.
Q. Have you ever found out what occurred at this meeting of April 12th?
A. No.
Q. Do you know now as you sit here in the court room what occurred at that meeting of April 12th, 1937?
A. I do not know.
Q. You never heard?
Mr. Lamfrom: You are shaking your head.
The Witness: No.
Trial Examiner Batten: Might I ask a question?
Mr. Rissman: Yes, sir.
Q. (By Trial Examiner Batten) Was the man who asked you to send out these notices and notify Mr. Landry an employee, foreman or superintendent of the company?
A. An employee.
Q. An employee, you are very certain of that?
A. I am quite certain of that, yes, sir.
Trial Examiner Batten: I think we will recess for a few minutes.
(A short recess was taken.)

Trial Examiner Batten: I believe we will proceed, gen-
838 tlemen.

Q. (By Mr. Rissman) In notifying the employees to attend the meeting of April 12th, do you know if any of them were notified by telephone, any of those who were not in the plant?

A. I did not call any on the telephone.

Q. Do you know if any were called?

A. No, I don't.

Q. Did you ask anybody to telephone some of the employees?

A. I don't remember, I might have.

Q. Directing your attention to the meeting of April 8th again, were you present from the beginning to the end of that meeting, that was the last meeting of the Works Council.

A. As I remember I was not present at the very beginning. I was there and because one of the employer representatives had not come in, I left the meeting to give him a special notice that he was expected.

Q. But did the meeting open without you or were you there when the meeting was called to order?

A. I think it had just opened and then I stepped out and called him; I wouldn't be real certain.

Q. Were you there when the meeting closed?

A. Yes.

Q. What was the time of the Works Council meeting, was there any set time?

A. They started at approximately one-thirty and—

839 Q. How long did they continue?

A. Generally between three, three-thirty and three-forty-five.

Q. How long did this particular meeting last on April the 8th?

A. I don't know offhand.

Q. Do you know whether it was longer than the usual meeting or shorter or was it about the same as the ordinary?

A. I think it was just about the same. However the minutes would show that.

Q. Do you recall Mr. Harold Falk was present at the meeting?

A. I don't recall whether he was present or not, I don't think he was.

Q. Don't you recall that he was present at that meeting and he spoke to the employees on that day?

A. I don't recall he was there at that meeting, whether he as there at that meeting or not.

Q. Don't you recall that he spoke to the employees with eference to the Independent Union?

A. No.

Q. Don't you recall that one of the employee representatives at that meeting asked Mr. Falk if the workers could use he company property for a meeting in order to create and organize an independent union?

40 A. I don't recall any such question.

Q. Don't you recall that on April 8th it was decided y the men present at the Works Council meeting, that they ould meet the following week for the purpose of creating an ndependent union?

A. No, I don't recall.

Q. Do you recall anything about the meeting of April 8th xcept that you were a little late in getting there?

A. That is about all.

Q. You don't recall anything else said there, what was done or who was present?

A. I do not have any recollection of the business transacted, no.

Q. Do you recall that at that meeting it was understood nd decided upon by the men present that Mr. Harold Falk, he vice president of the company, was to investigate and tell he men just how far they could go in organizing an independent union?

A. No, I don't recall any such thing.

Q. Do you recall any such statement at any time?

A. I do not.

Q. Do you recall any similar statement at any time?

A. No, I don't.

Q. When did you know that the meeting of April 8th, 1937 was the last meeting of the Works Council?

41 A. Probably the day before the meeting.

Q. And knowing the day before the meeting that it as to be the last meeting, it made no particular impression pon you that it was the last meeting, did it?

A. No.

Q. How did you learn and from whom did you learn that was to be the last meeting?

A. I think it was announced that under the law the Works ouncils were outlawed.

Q. Who announced that?

A. The announcement was in the paper.

Q. Don't you know that works councils and employer domineered representation plans were outlawed on July 5th, 1935 when the National Labor Relations Act became effective?

A. I do know the Act became effective quite some time before the Works Council was disbanded.

Q. What particular event occurred the day before April 8th, 1937 that led to the definite announcement that the Works Council would no longer exist?

A. The Supreme Court decision on the matter.

Q. The Supreme Court decision was announced by the Supreme Court at approximately eleven-fifteen a. m, Central Standard Time of April 12th, 1937.

Now, in view of that fact, and I take you do not doubt that is the fact, how did you know on April 7th or 6th, the
842 day—a day or two before April 8th, that the Works Council would be out of existence?

A. I don't remember that I did definitely know it; it may be that it was only spoken of as a possibility.

Q. By whom?

A. Let's see; possibly by Mr. Richard Falk.

Q. And who is Mr. Richard Falk?

A. Some member of the Falk family.

Q. He is a son of Mr. Harold Falk?

A. Yes.

Q. Would you say in anticipation of the Supreme Court decision Mr. Falk prophesied on April 6th or 7th that the Works Council would be outlawed?

A. I don't recall that it was a prophecy necessarily.

Q. But it was a statement?

A. Expressed as a possibility.

Q. Prior to April 12th, 1937, prior to the announcement by the Supreme Court of its decision upholding the validity of the National Labor Relations Act, did you ever consult with anybody or talk to anybody about the possibilities or likelihood of that decision, whether or not it would be as it was, or whether it would declare this law invalid?

A. I think in the course of conversations that probably was brought up.

Q. What were the opinions as appeared in any news-
843 paper items, editorials and columns, or as generally announced by employers, as to what would be the decision?

A. What was the opinion expressed?

Q. Yes.

A. I don't recall that there was any definite opinion expressed as to what might possibly be the decision.

Q. Wasn't it generally known and didn't you generally know and believe that the opinion of curbstone judges was that the National Labor Relations Act was going to be declared unconstitutional?

Mr. Lamfrom: Of course some of the judges of the Circuit Court of Appeals, who are not curbstones, felt the same way, and some district judges and some very good lawyers, and four men of the Supreme Court; so the curbstone fellows have some defense here.

Mr. Rissman: I exclude from my question any duly appointed Federal judge.

The Witness: May I have the question read.

(The question was read.)

Mr. Engelhard: Now, your Honor, we object to this line of questioning; this is immaterial to the issue in this case. What he believed would happen in the Supreme Court is not material to the issue.

Trial Examiner Batten: What is your opinion as to that matter being at all relevant to the issues in this case?

844 Mr. Rissman: It is relevant to the matter in issue in this case, because the witness testified he knew the Works Council was no longer going to exist because of the fact that the Supreme Court announced—

Mr. Engelhard: Now, it may have been a perfectly good belief, and after the decision came down you happened to have him hooked on an erroneous date—

Mr. Rissman: I submit that if the witness is hooked up, he has hooked himself up.

Mr. Engelhard: He may be honestly mistaken about the dates.

Now, you are trying to hang him on a date.

Trial Examiner Batten: I don't know if the matter of being mistaken about dates has anything to do with this particular question.

I will sustain the objection as to the question. I don't see that it is material to the issue here.

Q. (By Mr. Rissman) Can you tell us now why one or two days before the last meeting of the Works Council you knew that the Works Council was going to go out of existence?

A. I qualified that statement later by saying that I possibly didn't know, but considered it as a strong possibility.

Q. And what led to your consideration of it as a strong possibility?

A. Merely talk that was being generally spread about
845 as to the possibilities of the Wagner law being held constitutional or unconstitutional.

Q. And in that discussion with Mr. Richard Falk was anything said with reference to the advisability or necessity of the employees having some other form of representation that would come within the terms of the law?

A. I don't recall that any time we discussed the necessity or advisability of any other representation plan.

Q. Or did you discuss any other representation plan in some other respect other than the advisability or necessity?

A. Well, what do you mean?

Q. Did you discuss an employee representation plan, to be more specific a union of any kind of name, in the event the Works Council did go out of existence?

A. I don't remember that we discussed it.

Q. Or talked about it?

A. A union of any kind.

Q. Something was said—

A. Except possibly the wonder was expressed as to what might transpire.

Q. What was that wonder as to what might transpire?

A. Merely that—well, just wondering what might happen if the Works Council were disbanded.

Q. And when did that wonder first develop into the independent Union of Falk Employees?

846 Mr. Lamfrom: Now, that is objected to. He is asking for a conclusion on the part of the witness.

Trial Examiner Batten: I think this witness may answer if his wonder developed into the Independent Union.

Mr. Lamfrom: There is no testimony here as to his wonder.

Trial Examiner Batten: Well, I mean by that he may answer the question if he thinks he is qualified to answer the question.

Mr. Lamfrom: I think the reporter can repeat the question.

Trial Examiner Batten: Yes, let's repeat the question, please.

(The question was read.)

The Witness: When did that wonder first develop into the Independent Union of Falk Employees?

Mr. Lamfrom: Your wonder.

The Witness: I don't know that it had anything to do with it.

Q. (By Mr. Rissman) When did you first become aware of the existence of the Independent Union of Falk Employees?

A. Oh, some time the latter part of April 1937.

Q. 1937?

A. 1937.

Q. How did that then become apparent to you?

847 A. It was pretty generally broadcast around the plant that the Independent Union had been formed.

Q. Are you familiar with the officers of that Independent Union?

A. I happen to know who some of them are.

Q. Who are some of them that you happen to know?

A. I know Mr. Wilson.

Q. What is his office?

A. He is president. And Mr. Mabis, he is secretary, I believe, either secretary or treasurer, and I happen to know one or two representatives of that union.

Q. Do you know, aside from the officers you have named, who the members of the Independent Union are?

A. Do I know who the members of the Independent Union are, all of them?

Q. Yes.

A. No.

Q. Have you any means of ever identifying the members of the Independent Union?

A. I have none whatever.

Q. Has the Independent Union ever furnished to you a list of its members?

A. Never.

Q. Do you know or have you been advised how many members the Independent Union has in the Falk Corporation?

848 A. Not that I know of.

Q. Do you know whether they have a few or many?

A. All I know is that they claimed to have a majority of employees of the Falk Corporation as members.

Q. Have you or do you know whether any other officer of the corporation has investigated that claim?

Mr. Lamfrom: We admit that we as attorneys investigated that claim.

Mr. Rissman: Please allow the witness to answer.

Trial Examiner Batten: You may answer whether you know.

The Witness: I do not know myself.

Q. (By Mr. Rissman) Do you know if there was ever any election at the plant for the purpose of determining how many employees chose the Independent Union to represent them?

Mr. Engelhard: That is a matter of record here, that there has been no election and no claim is made by us that there was an election.

Trial Examiner Batten: The question is, whether this witness knows that.

Mr. Engelhard: It seems to me wholly immaterial to ask the witness a question on something that is admitted of record here.

The Witness: There has never been any such election to my knowledge.

849 Q. (By Mr. Rissman) Do you know as personnel officer of The Falk Corporation, whether or not the Falk Corporation now recognizes the Independent Union as sole bargaining agency for collective bargaining?

A. I know that it does.

Q. How do you know that?

A. The statement has been made around the plant, it is generally known in the entire works.

Q. Have you ever had any official confirmation of that general knowledge?

A. I have not.

Q. Have you ever discussed the Independent Union with any other officers of the corporation?

A. Never.

Q. Have you ever discussed the Independent Union with the superintendents?

A. No.

Q. Or with Mr. Harold Falk?

A. No.

Q. Have you ever discussed the Independent Union with any employees of The Falk Corporation?

A. No.

Q. Have you ever spoken to any officers of the Independent Union about their organization?

A. Spoken to them about the organization?

850 Q. Or about anything else?

A. No.

Q. In connection with it?

A. Never anything with reference to the Union.

Q. Did you ever speak to them prior to its creation about its organization?

A. I did not.

Q. Did you ever speak with anybody about the advisability or necessity of having created the Independent Union?

A. No.

Q. After the meeting of April 12th, to which you summoned workers for a purpose which was unknown to you, did you ever inquire of any employees what the purpose of the meeting was?

A. I don't remember that I did.

Q. Did any of them ever tell you without your inquiring?

A. No, I don't think so.

Q. Are you sure?

A. Quite certain.

Q. Did you ever speak to any officers of the corporation, any foremen or superintendents about that meeting?

A. No.

Mr. Lamfrom: You mean officers of The Falk Corporation or the union corporation.

Mr. Rissman: I forget that the Independent Union is also a corporation.

851 Q. (By Mr. Rissman) I referred to The Falk Corporation.

A. No, I did not.

Mr. Rissman: I thank Mr. Lamfrom for pointing out the similarity.

Mr. Lamfrom: It was a little ambiguous under the circumstances.

Q. (By Mr. Rissman) Weren't you curious about the purpose or reason for that meeting, or what transpired there?

A. I don't recall that I had any particular curiosity about it.

Q. As personnel relations man of The Falk Corporation,

did you know whether or not the activities at that meeting had to do with the welfare of the company?

A. No, I don't.

Q. Weren't you concerned and wasn't it your duty to inquire as to whether or not that meeting was for the advantage or disadvantage of the employees of the company?

A. Not necessarily.

Q. Did you have any ideas as to—any ideas of your own as to what kind of meeting was being held?

A. Did I have any idea of my own as to what kind of meeting was being held?

Q. Yes, sir.

A. You mean on April 12th?

Q. On April the 12th.

852 A. I don't think I did.

Q. Did you suspect that it might be a meeting for the purpose of creating an independent union of Falk employees?

A. I don't think I did.

Q. How long have you been personnel man of The Falk Corporation?

A. About four years.

Q. And in the four years, past four years you have participated actively in the Works Council meetings and other meetings of employees?

A. Only Works Council meetings of employees.

Q. And one occasion when you attended a caucus of employee representatives?

A. I merely stepped in there at their request and answered a question and stepped right out again.

Q. Naturally, either at the request of the employees or in performance of your duties as secretary of the Works Council, you have met with the employees?

A. Yes, sir.

Q. Do you now mean to tell us that you had no idea then, now, or at any time in between April 12th and today the purpose and nature of the meeting of April 12th?

Mr. Engelhard: Now, just a moment, it seems to me that question is taking in a lot of territory.

He says "then and now."

853 Trial Examiner Batten: I think the question to the witness—I think he has testified that he didn't know the purpose of the meeting, and I think the question is, did you know on April 12th, do you know now the purpose of the meeting of April 12th.

The Witness: Is that the question I am to answer, do I know now the purpose of the meeting of April 12th?

Trial Examiner Batten: Yes, do you?

The Witness: I know that the meeting of April 12th, or have heard, I should say I know what I have heard about it, that the meeting of April 12th was to discuss ways and means of a representation plan to substitute for the Works Council.

Q. (By Mr. Rissman) When did you first learn that?

A. Oh, quite some time subsequent to the meeting.

Q. Did you know that when you were on the stand before?

A. Yes.

Q. Why did you answer in response to the question, "That even right now I don't know the purpose of that meeting"?

Mr. Engelhard: He didn't testify that.

Mr. Rissman: I submit he did and I will have you refer to the record.

Trial Examiner Batten: Will the reporter refer back to that testimony.

Mr. Rissman: Off the record, now.

854 (Discussion off the record.)

Trial Examiner Batten: All right, we will proceed and reserve that question until tomorrow morning.

Mr. Rissman: I have no other questions except those which might arise out of the answer Mr. Hydar will give to the unanswered question.

Trial Examiner Batten: Mr. Lamfrom.

Mr. Lamfrom: I think we will use the same procedure with Mr. Hydar as we have indicated we will use as to the preceding witnesses.

Trial Examiner Batten: Mr. Goldberg.

Mr. Goldberg: No questions.

Trial Examiner Batten: Mr. Clark.

Mr. Clark: I have no questions.

Trial Examiner Batten: We will adjourn then until nine-thirty tomorrow morning.

(Whereupon, at 4:55 o'clock p. m., August 17th, 1937, an adjournment was taken until August 18th, 1937, at 9:30 o'clock a. m.)

858 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
(Caption—XIIC57 and XIIR85)

Room 409 Milwaukee County Courthouse,
Milwaukee, Wisconsin,
Wednesday, August 18th, 1937.

The hearing was resumed, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

James C. Batten, Trial Examiner.

Appearances:

Robert R. Rissman, and
S. G. Lippman, Attorneys, on behalf of the National Labor Relations Board.

A. G. Goldberg, 511 Warner Building, Milwaukee, Wisconsin, appearing for International Union of Operating Engineers, Local No. 311.

Giles F. Clark, of Alexander, Burke & Clark, 110 East Wisconsin Street, Milwaukee, Wisconsin, appearing for Independent Union of Falk Employees.

Lamfrom, Tighe, Engelhard & Peck, by
Mr. Leon B. Lamfrom, and
Mr. A. J. Engelhard, appearing for Falk Corporation.

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859 PROCEEDINGS.

Trial Examiner Batten: In accordance with the permission given by Mr. Goldberg, who represents the Operating Engineers, Mr. Goldberg authorized us to proceed if he was not here all of the time; so in accordance with that permission we will proceed.

Mr. Lamfrom: If I may say, Mr. Batten, that I was to have the answer to the intervening petition of the Engineers Union, and I arranged with Mr. Goldberg yesterday to have a short extension; in fact he said I could take as long as I wanted to, but will have it by two o'clock.

Trial Examiner Batten: That is satisfactory.

Mr. Lamfrom: At which time we will also give you a copy gratis.

Trial Examiner Batten: I think we will proceed.

Mr. Rissman: All right.

VICTOR J. HYDAR resumed as a witness by and on behalf of the National Labor Relations Board, being previously duly sworn, testified further as follows:

Mr. Rissman: At the close of yesterday's hearing, if the Examiner please, the reporter was to check up some previous questions and answers to this witness.

May we have that question and answer read.

Trial Examiner Batten: Will the reporter please read
860 the question and answer.

(The record was read as directed.)

Examination by the Chair.

Q. (By Trial Examiner Batten) You may answer that question.

A. Why did I answer in response to the first question?

Q. You were asked previously had you ever heard the purpose of the meeting of April 12th; you were also asked the question, had you ever heard of the purpose of that meeting, and to both questions you answered no.

Then later to other questions, you said you had heard of the purpose of the meeting some time—

A. Subsequent.

Q. —subsequent to the meeting.

Now, the question is, why did you previously say you had not heard, and now say that you had heard?

A. Except—well, the reason was that at that time the question had gone on, "Did I know", and possibly after the question was changed to, "Had I heard", I did not just follow that particular change.

Trial Examiner Batten: Now, will you turn back to the first question again, please, so that the witness may listen to the wording of it?

Mr. Lamfrom: And pay close attention to the question as the reporter reads it to you, so as to get the full con-
861 tent of it.

(The record was read as directed.)

The Witness: Well, the question there says, "Had I found out what had occurred in that meeting", and as an actual matter of fact I have not to this time found out what occurred in the meeting.

I have heard the purpose of the meeting since then, I have heard that the purpose of that meeting was to discuss ways and means of a substitute for the Works Council, but I don't know what occurred in the meeting.

Q. (By Trial Examiner Batten) Now, you were previously asked, had you heard and you said no, but you now recall—

A. Well, I have never heard what the actual proceedings of the meeting were.

Q. You are distinguishing them between what you heard and what actually occurred?

A. That is right.

Mr. Rissman: That is all.

Trial Examiner Batten: Mr. Clark.

Mr. Clark: I haven't any questions.

Trial Examiner Batten: I presume in order to preserve Mr. Goldberg's rights in this proceeding, I should reserve the right of Mr. Goldberg to question this witness as he so desires when he comes in.

Mr. Lamfrom: That is perfectly agreeable to us.

862 Trial Examiner Batten: If that is agreeable to counsel I will do so.

Mr. Lamfrom: Certainly.

Trial Examiner Batten: Are there any further questions? (No response.)

Trial Examiner Batten: You may be excused.

Mr. Lamfrom: The same method of procedure, the respondent will use with reference to Mr. Hydar.

Trial Examiner Batten: That is understood with reference to these witnesses, as I said before, technically respondent's witnesses.

Mr. Lamfrom: That is right.

(Witness excused.)

Mr. Rissman: Mr. Koch.

BERNARD KOCH, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) Will you state your name.
A. Bernard Koch.
Q. You are also known as "Ben"?
A. Known as "Ben", yes.
Q. What is your present occupation?
A. Superintendent of the welding department.
863 Q. At the Falk Corporation?
A. At the Falk Corporation.
Mr. Lamfrom: Will you talk a little louder, Mr. Koch. It is pretty hard for us to hear you.
The Witness: All right.
Q. (By Mr. Rissman) How long have you occupied that position?
A. Since the 6th of May, 1937.
Q. Prior to that what was your work?
A. Foreman in the welding department for about, oh, two or three years.
Q. How long have you been employed by The Falk Corporation altogether?
A. Approximately ten years, but not at one straight stretch.
Q. Did you attend the meeting referred to as the foremen's banquet at a hotel downtown in Milwaukee some time in April 1937?
A. Yes.
Q. Do you recall the date of that?
A. No, I don't.
Q. Where was it held?
A. I think it was held at the Medford.
Q. Who was present? I am not interested in names, just tell us generally.
A. A group of foremen.
864 Q. About how many?
A. Approximately 15 or 20.
Q. What was the purpose of that meeting, or do you know, Mr. Koch?
A. As I understood, it was an explanation—I don't know

now whether the Severson Act or the Wagner law, one of the two.

Q. By the Severson Act you refer to the Wisconsin Labor Relations Act?

A. Yes, sir.

Q. That became effective April 16th, 1937.

Who addressed the foremen with reference to those two laws?

A. Mr. Peck, I believe his name was.

Q. An attorney asociated with Mr. Lamfrom?

A. I don't know what association he had.

Mr. Lamfrom: Well, as a matter of fact he is and the record may show he is one of our firm, and we will produce him as an exhibit at any time you want to see him.

Mr. Engelhard: For identification only.

Mr. Lamfrom: We can't leave him here.

Mr. Rissman: Produce a copy.

Mr. Lamfrom: Yes.

Q. (By Mr. Rissman) Do you recall some of the things he told the foremen with reference to what you could or could
865 not do in connection with employee relations, labor relations?

A. Yes, I recall one thing. I think Mr. Peck told us that as a foreman, why, it seemed as though we were not to be allowed to voice any opinion on the labor situation, or these acts or labor unions.

Q. Were there questions at that time as to just what extent a foreman could talk to an employee about the labor situation, do you recall?

A. I don't remember much about that meeting; that was about the line of it in my mind.

Q. There were some questions, just to refresh your mind, as to whether a foreman was on the street and also the employee—

A. Yes.

Q. —was away from the plant, whether or not they could talk about the unions?

A. Yes, there were questions.

Q. Do you recall what the answers to those questions were?

A. Mr. Peck's answers?

Q. Yes.

A. In the discussion we had there—

Q. Mr. Peck's answers.

A. I am pretty sure that Mr. Peck said that even on the street, I guess, I think he advised us not to say anything.

Q. In other words, Mr. Peck's advice in a general way
866 was that the foremen should keep their hands off of all union affairs?

A. Right.

Q. If the men wanted to belong to a union that was their affair and if they spoke to you about it, you were not to discuss it with them?

A. Yes, sir.

Q. Was that the policy generally followed by the men before that meeting with Mr. Peck?

Mr. Lamfrom: Now, by the men.

Mr. Rissman: By the foremen.

Mr. Lamfrom: Yes, the foremen.

Mr. Rissman: The foremen.

Mr. Lamfrom: I see.

Mr. Engelhard: That is, if he knows.

Mr. Rissman: Naturally.

The Witness: Well, I don't think that it come up much before that, to my knowledge, in the shop.

Q. (By Mr. Rissman) While you were foreman was it your practice to keep your hands off—to keep a hands-off policy with reference to labor matters before Mr. Peck's address?

A. What do you mean, a hands-off policy?

Q. The same thing Mr. Peck instructed you to follow.

A. No, I did not practice that.

867 Q. What was your policy and practice as a foreman with reference to labor matters in the shop?

A. Well, I expressed myself freely at all times, just how I happened to feel.

Q. To whom did you express yourself?

A. Any one or every one.

Q. To the employees?

A. To the employees.

Q. Employees who worked under your supervision?

A. Yes, sir.

Q. In the foundry?

A. Right.

Q. What were some of the opinions you expressed to those employees with reference to labor unions?

Trial Examiner Batten: Mr. Rissman, I wonder if you will have him place the time.

The Witness: I—

Mr. Rissman: The witness said he didn't remember the date of the meeting. You have that, that it was some time in

April, I believe, following the Supreme Court decision on the National Labor Relations Act.

Trial Examiner Batten: Then I take it he is referring now to statements he made prior—

Mr. Rissman: Before that meeting.

Trial Examiner Batten: Prior to the meeting at which
868 Mr. Peck spoke.

Mr. Rissman: Yes, but within two or three months before that time.

The Witness: And that has been my policy always, to say what I thought.

Q. (By Mr. Rissman) What were some of the things you said to the men at that time about labor unions?

Mr. Engelhard: Now, just a moment, at what time? You mean over a period of ten years?

Q. (By Mr. Rissman) Over a period of four months preceding the meeting with Mr. Peck?

A. I don't remember anything of particular significance that I said before that time.

Q. Did you express your opinion on labor unions?

A. Yes.

Q. What is or was your opinion on labor unions at the time you expressed them?

Mr. Lamfrom: Just a minute, I object to the form of that. I think he may testify as to what he expressed his opinion to be, because that is, after all, the only thing material here.

Q. (By Trial Examiner Batten) Do you recall any particular instance or any particular employee to whom you expressed an opinion?

869 A. That is, prior to this meeting?

Q. Yes.

A. No, I don't recall any that would be prior to that meeting, or as to dates, I don't have any in mind.

Q. Well, you have testified you did freely express your opinions?

A. Yes.

Q. Now, do you recall that on some occasions you have expressed an opinion with respect to unions in the shop?

A. Well, I have often expressed the opinion I did not like the way the unions were run, but not a particular instance.

Q. Well, have you expressed those opinions in the shop to employees?

A. Yes.

Q. On several occasions?

A. On several occasions.

Q. When you told them that you did not like the way the unions were run and so forth, tell me a little more detail of what you said about the operations you did not like.

A. Well, I believe I have said that, I have said a lot of things.

Q. Well, tell us what you said?

A. Well, I have said that I did not like the idea of somebody making a living off of the union, that there should be somebody in each—well, at least the workmen that work
870 in the trade should hold an office in the union.

Q. What other opinions have you expressed, you said there were several of them.

Now, tell us some.

A. Well, they were all in the course of the discussions, I have expressed the opinion that whatever dues a man paid to the union, just came another drain on the workman's pocket, for which in my opinion he did not get an adequate return.

Q. Have you ever expressed any opinion as to the relative merits of an independent union as opposed to one which was affiliated with some national organization?

A. Yes, I believe I have.

Q. What did you say?

A. Well, just along the line, just a few remarks, that as far as the dues, and so forth, in the smaller organization would be smaller and would stay in that organization.

Q. Would you be eligible for membership in a union?

A. No.

Q. You wouldn't have to pay any dues?

A. No.

Q. (By Mr. Rissman) Mr. Koch, would you say that the opinions you expressed about unions were generally in favor of unions or opposed to unions?

A. Opposed.

871 Q. Did you express any opinions about the Amalgamated Association of Iron, Steel and Tin Workers Union, or as it is generally branded, the C. I. O.?

A. Yes.

Q. Were those opinions in favor of it or opposed to it?

A. Opposed to it.

Q. And the employees who work under you generally knew that you, as a foreman, opposed the union?

A. Yes.

Q. Do you know Louis Meihdle?

A. Yes.
Q. Who is Louis Meindle?
A. A fellow who works for me in the chipping room.
Q. How long have you known him?
A. Four years at least.
Q. Do you know whether or not he is a member of a labor union?
A. I know he is a member.
Q. Of which union?
A. The C. I. O.
Q. Have you ever expressed an opinion to Louis Meindle?
A. Yes.
Q. What have you said to him about the C. I. O.?
A. I asked him what benefits he expected to derive through an organization like that, over and above what he was
872 getting.
Q. Did you suggest to him that if he wanted to join a union it would be better for him to join the Independent Union?
A. I may have.
Q. Did you suggest to him that if he joined the Independent Union there was more to be gained because their dues were not as great and it was a union just for the Falk Company, and they had the approval of the Falk Company and various foremen?
A. Not just that way, no.
Q. In just what way, tell us in your own way?
A. I told Mr. Meindle that through membership in the C. I. O. he would be losing more freedom that he still has,—well, in my opinion that he would be ordered from outsiders to do certain things, whereas if he belonged to some other union that would be controlled, he would have a more controlling voice in the Independent Union than he would have in the C. I. O.
Q. When you spoke of the independent union you had in mind specifically the Independent Union of Falk Employees?
A. No.
Q. Well, was there any other independent union in existence at this plant?
A. Well, to my knowledge there were several of them started, that I heard about.
873 Q. At The Falk Corporation?
A. Yes, several types; there were several groups that had different ideas.

Q. Between March and June, 1937?
A. Yes.
Q. How many organizations existed?
A. To my knowledge three.
Q. What are the three?
A. The American Federation of Labor, the C. I. O., and the Independent Union.
Q. So that the only independent union at the present time is the Independent Union of Falk Employees?
A. Yes, to my knowledge.
Q. When was the first time you were instructed by the superintendent or by Mr. Falk that the foremen were to not express any opinions on union affairs and union activities?
A. I believe it was shortly after the meeting I spoke to Mr. Falk about it.
Q. After what meeting?
A. After the meeting Mr. Peck was at.
Q. Yes.
A. And I asked him if we were to take it for granted that we would not express an opinion even if we were asked.
Q. Yes.
A. And he told me that was right, that I should keep 874 my fingers out of it entirely.
Q. You naturally have complied with that instruction all the time since then?
A. No.
Q. Then you have expressed opinions about labor unions?
A. Yes.
Q. Since that time?
A. Yes, sir.
Q. In violation of your instructions from Mr. Falk?
A. Yes.
Q. And the opinions you have expressed in violation of your instructions are the same as the opinion expressed before the meeting with Mr. Peck?
A. Yes.
Q. Are you on the night gang or the day gang?
A. Day gang.
Q. On Apil 12th, 1937 was anybody from your department—pardon me?
A. I might have said on the night gang. You see, I did not go steady on days until the 6th of May.
Q. So you changed—
A. Before that time I was changing four weeks on and four weeks off, so on the dates I wouldn't know—

Q. Were you ever on the day gang in April, in the month of April?

875 A. I don't think so, because the night of that meeting I worked a while and then went down to that meeting. There might have been two or three days at the beginning or end, but I think during the month of April I was on the night shift.

Trial Examiner Batten: Mr. Rissman, did you ever secure the date of that meeting?

Mr. Lamfrom: April 22nd or 23rd.

Mr. Engelhard: 22nd.

Mr. Lamfrom: 22nd, that is it.

Mr. Rissman: The 22nd?

Mr. Lamfrom: Yes.

Mr. Rissman: Thank you.

Mr. Lamfrom: We just had it checked up.

Q. (By Mr. Rissman) That was April 22nd, that meeting. Was that the same day that you had this conversation with Louis Meindle about what he was getting out of the union?

A. The 22nd?

Q. The same day after the meeting at which Mr. Peck spoke?

A. No, I did not get back to the office that night as I remember.

Q. But you said you were at the shop before you went to the meeting.

A. Yes.

Mr. Rissman: That is all.

876 *Cross-Examination.*

Q. (By Mr. Lamfrom) Now, these opinions that you expressed from time to time to the men were they your own personal opinions?

A. Absolutely.

Q. Had you ever been instructed by any officers of The Falk Corporation to voice your opinions as to the relative merits of labor unions to the men?

A. On the contrary I was instructed not to, to keep my fingers out, I think it was twice.

Q. When was the first time you were told to keep your fingers out of it?

A. To my knowledge the first time that the thing come

up was probably the day before the meeting when Mr. Peck recited.

Q. Who told you?

A. Mr. Falk.

Q. Which Mr. Falk?

A. Mr. H. S. Falk.

Q. Mr. Harold Falk?

A. Mr. Harold Falk.

Q. What was the occasion that led to his telling you to stop it? I imagine that was what he told you, wasn't it?

A. Yes, I went and asked him and told him there was a lot of excitement, a lot of running around signing up, and so forth, and I asked him what I should do about it.

877 In spite of the orders I issued not to do it, it was still being kept up, and I asked him if he thought it was worthwhile to do anything further because of that.

Q. And what did you say?

A. He says, "No, try to stop it as much as you can, and go on and let it go at that."

Q. You mean with reference to that, the signing of applications on company time?

A. The signing up of applications on company time.

Q. Now, at the time you went to Mr. Falk, which you have just testified to, was there a disturbance generally in the plant with reference to labor matters?

A. Yes.

Q. Now, describe for the Examiner just what the nature of that disturbance was and how it affected production work in the plant?

Mr. Rissman: I object to the question, if the Examiner please; we are not concerned here with any disturbance in the plant; we are concerned here with the violation of law as practiced by the foremen at the plant.

Trial Examiner Batten: I presume, Mr. Lamfrom, you refer to the disturbance and tense feeling which is created in a plant at a time when you have three or four organizations soliciting memberships and signing petitions and

878 talking about unions?

Mr. Lamfrom. Yes.

Trial Examiner Batten: Well, I think that without passing upon that, as to how material that may be, I might say that I think the Trial Examiner is fully acquainted with what occurs in these shops when you have three or four

organizations soliciting members, an infense feeling which develops as the result of it.

Mr. Lamfrom: I naturally would assume that you are familiar with that, but whether you are familiar with the reaction of that upon a loyal and competent foreman who desired to get his work out and the stimulation to him from that kind of conduct to make every effort he possibly can use legitimately to keep his production moving, whether you are familiar with that, Mr. Examiner, I don't know.

Trial Examiner Batten: I think it is well, Mr. Lamfrom, to have this witness testify to what effect that disturbance and so forth in the shop had upon him.

Mr. Lamfrom: That is what I mean.

Trial Examiner Batten: And what action he took to try to remedy the situation.

Mr. Lamfrom: That is what I am after.

The Witness: Well, in one corner there were two or three men arguing, arguing in some corner, and probably one for one side and probably one for another, and a man working in the chipping room would be in a different depart-
879 ment and a man working in the foundry would be over in the machine shop, and the machine shop in the foundry, or vice versa.

Q. (By Mr. Lamfrom) How long did that condition continue?

A. For quite a period of time.

Q. Well, in a general way for how long a time?

A. I would say it took about three weeks before that thing simmered down.

Q. How many men do you have under you?

A. Since May 6th I have 60, 60 to 65.

Q. And before the 6th of May?

A. Before the 6th of May I had around 22 or 24.

Q. Now, this running around of the men in an attempt to get members for these various organizations, as it came under your observation, what effect did that have on you as foreman in the Falk Corporation?

A. Well, it spoiled my production by about 30 per cent.

Q. Do you feel that in relation to your duties as foreman, that you should use every effort you possibly could use to get production moving again?

A. Yes, I felt that way.

Q. And did you use such efforts?

A. Yes.

Q. And now describe the effort that you used to get a return of normalcy in the Falk plant in that department which you operated?

880 A. Well, I talked to the fellows, told them this union business was a whole lot like religion, they were not going to get anywhere arguing it during labor hours; that they—that we had a kind of young department and unless we kept up production and showed a fair return, why, we would not get results and the improvement that we all wanted in the department, if we kept up that line of talk.

Q. Did you in your talks with the men, which talks you have just indicated, discriminate between members of the C. I. O. as you knew them to be members, and members of the Independent Union as you knew them to be members?

A. No.

Q. Wasn't your primary interest that all of the men should drop taking off time from their work for these talks and gatherings and get to work?

A. Right.

Q. Did you ever obtain the views that you have on labor unions, that you have expressed here on the witness stand, from any officials of The Falk Corporation?

A. No.

Mr. Rissman: I object. It is entirely immaterial where he got them, as long as he expressed them in the plant.

Trial Examiner Batten: Well, I think it is proper for him to answer that question as to where he acquired
881 them. I don't know that it is material where he acquired them.

Mr. Rissman: They may be his own idea.

Trial Examiner Batten: I believe it is material whether he acquired them from the Falk officials.

Mr. Lamfrom: Yes.

The Witness: I never acquired any ideas from the Falk officials in regard to labor unions.

Trial Examiner Batten: Mr. Lamfrom, may I ask a question?

Mr. Lamfrom: Certainly.

Q. (By Trial Examiner Batten) Are you familiar with the letter which Mr. Falk sent out to the powerhouse employees in which he stated "We are not in favor of a union"?

A. I never saw it.

Q. You never heard of it?

A. I never heard of it. I heard of it yesterday, I believe, was the first time.

Q. Do you know what the policy of the company is with respect to unions?

A. No.

Q. You never heard of it?

A. No.

Q. You don't know what Mr. Falk's views are with respect to unions?

A. No, I don't.

882 Q. You never read about it in the paper?

A. Except that I asked Mr. Falk one thing in respect—I think it was respecting closed shop, at the time there was a notice in the paper about Allis Chalmers; I asked him when it is going to be the same thing here, and he told me as far as he can and as far as it was under control, he would try to keep an open shop.

Mr. Lamfrom: You may take the witness.

Redirect Examination.

Q. (By Mr. Rissman) Don't you know that all the time you were foreman at this plant, that you knew that they did not favor labor organizations?

A. No, I don't know that; I have serious reason to doubt it.

Q. Would it surprise you to learn that now?

A. I still don't think so.

Q. During the time of the so-called disturbances in the plant which you testified about, were the disturbances created by both the C. I. O. men and Independent Union men?

A. Yes.

Q. During the time that you expressed your opinions in favor of unions, or in disfavor of them, did you ever express an opinion that would lead the men to believe you did not favor the Independent Union?

A. Yes, several times.

883 Q. Did you ever express an opinion that would lead them to believe that you favored the C. I. O.

A. No.

Q. You never did that?

A. No.

Q. Did you ever express any opinions that would lead them to believe that you favored the Independent Union?

A. No, I didn't.
Q. How about the conversation with Mr. Meindle?
A. It goes no further than as I said, I believed a small organization was better for the workmen than a large international one.
Q. Then you did express an opinion in favor of the Independent Union?
A. Not any particular one.
Q. You didn't mention it by name?
A. How?
Q. You didn't mention it by name?
A. I mean I always, a small organization, I said was a lot better than a large organization.
Q. Do you know Mr. Harold Landry?
A. Yes, sir.
Q. He is one of the employees working under you?
A. No.
Q. He is one of the employees in the plant?
884 A. He is one of the employees.
Q. Do you recall a conversation with Mr. Landry about this same period, when you said to him, "There is only one fellow in our department who is a member of the C. I. O. and I will soon talk him out of it?"
A. I remember a conversation of that nature, but not those words.
Q. Just what were the words?
A. I believe Mr. Landry told me he had about 90 per cent of the fellows signed up in the C. I. O.
Q. Yes.
A. And I think I told Mr. Landry at this time—do you want the exact conversation?
Q. Yes.
A. As far as I remember.
Q. Tell us.
A. Well, it was rumored in the plant, the machine shop men, there were not that many, and I says, "If there is one why, he would still come through and get out of it."
Q. Did you contemplate at that time taking any steps to bring about the result you wanted?
A. No.
Q. Do you know if they got out of it?
A. No, I think I have a couple more now than I had at that time.

885 Q. More C. I. O. men?
A. More C. I. O. men.
Q. You are not doing such a good job, then?
A. Well, that wasn't the point. I think Mr. Meindle and Mr. Landry both have heard me express the opinion that it did not make much difference to me what union they belonged to, I just did not like unions.
Q. You don't like any kind of a union?
A. No, I don't believe in them.
Q. And you have told that to the men, too?
A. Yes.
Mr. Rissman: That is all.

Recross Examination.

Q. (By Mr. Engelhard) Mr. Koch, do you pal around with many men in your department?
A. Yes, sir.
Q. You bowl with them?
A. Yes, sir.
Q. And drink a glass of beer with them?
A. Yes, and Scotch, too.
Q. Is it not a fact that you and your men enjoy an argument about any question in the world?
A. Yes, sir.
Q. That is before the world?
A. Yes, sir.
886 Q. You discuss everything probably except religion?
A. I believe we even discuss religion once in a while.
Q. Now, is it customary for the men to discuss what is going in the country, like the C. I. O., the A. F. of L., or various newspaper reports?
A. Yes.
Q. And in connection with those you express your opinions to each other?
A. Yes, sir.
Q. What you call a friendly argument?
A. Yes, we have quite a few of those, not only as respects unions, but politics, or sports and everything else.
Q. You have known the men that you are with for years?
A. Yes.
Q. Is there any feeling of unfriendliness between any men in your department and yourself?
A. Not that I know of.

Q. You talk to each other rather freely, do you not?
A. Yes, sir.
Q. You swear at each other once in a while in a friendly manner?
A. Yes, friendly.
Q. And at each other?
A. Yes, sir.
Q. And nobody feels insulted because that occurs?
887 A. No, I think in my department down there we have as friendly a feeling as there is in any shop in the world.
Q. Is there any unfriendly feeling between you and Louis Meindle?
A. No.
Q. You are pals, aren't you?
A. Yes.
Q. Did you ever bowl with him?
A. No, I didn't bowl with Louis Meindle, but I drink beer with him.
Mr. Rissman: I will concede for the record that they are one big happy family.
Mr. Engelhard: I am not asking him just to ask questions.
Q. (By Mr. Engelhard) When you say you expressed your personal opinion you mean by that you figured you had the right to express your personal opinion as a matter of freedom of speech.
A. Yes, I still feel that way.
Q. You did it even after you were warned not to do it?
A. Yes, sir.
Q. Is that your feeling, that freedom of expression is greater than the right of anybody to curtail it?
A. Will you repeat that?
Mr. Engelhard: Read the question, please.
888 (The question was read.)
A. Yes.
Mr. Rissman: I object to that question.
Trial Examiner Batten: Well, he has answered the question.
Q. (By Mr. Engelhard) Now, when you had this discussion with Louis Meindle, who started it?
A. That would be hard to recall. Louis Meindle and I have had quite a few discussions, and who started them—one of them started, I think, because Louis asked me to come down to one of the meetings and see just what the C. I. O.

was like and get acquainted with it. I think he invited me down there to get acquainted with the C. I. O. and see what it was like.

Q. Was that when you had a friendly debate with him?

A. Yes.

Q. (By Trial Examiner Batten) What did you say about going down to the meeting?

A. Well, I thought the opinions I had expressed, in a mob like that it would not be quite safe.

Q. Even if some of them were your friends?

A. Well, there wouldn't be enough of them, just a few fellows in a crowd like that.

Q. (By Mr. Rissman) That was because those opinions were unfavorable to the union?

889 A. Yes.

Q. (By Mr. Engelhard) Was it your intention to in any way influence Louis Meindle in his right to belong to the C. I. O. or the A. F. of L.?

A. No, I have told him several times the big objection, I have told Louis Meindle several times, I had to the C. I. O. or any of those big organizations was that, they went on strike for a closed shop and would not allow a man who did not believe the way they did the right to work without joining the organization.

That is the big thing I still have against those organizations.

Q. And that discussion was a discussion that simply arose out of your approaching Louis Meindle and trying to preach to him?

A. No, I talked to the men several times during the day, I suppose, when I was foreman about this thing, and that, other things would come up.

Q. Did you buttonhole the men?

A. No, I didn't buttonhole the men, I don't ever buttonhole the men, but we do stop and talk when I get around in the shop to see what they are doing, I ask them where they were last night and things like that.

Q. Do they ever kid you about matters of that kind?

A. Yes, sir.

890 Q. And you kid them?

A. Yes, sir.

Q. And in the course of the kidding you express your opinions and they express their opinions?

A. Yes.

Q. Is that correct?

A. Yes, I have expressed the opinion to Louis Meindle that even though I did not like the C. I. O., he would never have to worry about his affiliation with the C. I. O. in anyway interfering with his wages, promotion or anything in the plant, that as long as he did his work, that was all I was interested in.

Q. When was the last time you had an argument with any of the men regarding these matters?

A. Last night.

Q. And I suppose you will perhaps have one tomorrow?

A. Probably this afternoon.

Q. In other words, that is a part of the life—

A. Yes.

Q. —that is your life and their lives, is that correct?

A. Yes.

Q. You fellows don't go around carrying chips on your shoulders?

A. Not at all.

Q. You have friendly debates?

894 A. Right.

Q. And there is a distinct difference of opinion, is there not?

A. Yes, sir.

Q. Between you and your men?

A. Yes.

Q. And among the men, too?

A. Yes, sir.

Q. You get some men that agree with you and some men disagree?

A. Right.

Q. But there is no hard feeling as a result?

A. No.

Mr. Engelhard: That is all.

Q. (By Trial Examiner Batten) Mr. Koch, this friendly feeling that exists in your department has been there for some time, has it?

A. Yes, it has been there for quite a while.

Q. And I presume that you are interested in building that up and continuing such feeling?

A. I have tried hard to promote that feeling we have had from the beginning, and very little of the groups have tried as hard as us to get together.

Q. Don't you think your views with respect to unions would have more influence or more cause of friendliness
892 with them than strangers?

A. Yes, I believe they would.

Q. So that this friendly feeling that exists in your department would tend to have the men more readily accept your views than if they were strangers to you, is that right?

A. No, I don't think so; I think that friendly feeling is a matter of the men offering more opposition to it, to whatever argument I would make than otherwise, because they felt at liberty to say what they felt and what they thought. Without that friendly feeling I don't think they would have felt free to express themselves.

Trial Examiner Batten: That is all I have.

Q. (By Mr. Lamfrom) In other words you give the men every opportunity through friendly contact with them in and out of the shop to express their opinions and you express your opinions?

A. Yes, sir.

Redirect Examination.

Q. (By Mr. Rissman) This argument last night, was that about union affairs?

A. Yes. With Mr. Landry?

Q. With Mr. Landry.

A. Yes.

Q. Did you express some more of your opinions?

893 A. Well, just repeated them.

Q. If the C. I. O. obtains a majority or has a majority of the members in the plant and as a result of that majority, the company should enter into a closed shop agreement with them, that would be a serious matter in your opinion?

A. Yes, I believe that would be serious enough for me to go out and look for another job.

Q. You couldn't forget about that then?

A. Not any more.

Mr. Rissman: That is all.

Recross Examination.

Q. (By Mr. Lamfrom) Why would that affect you that way?

A. Because to my mind a closed shop is absolutely unfair.

Q. Why do you think a closed shop is absolutely unfair?

A. Well, I think that the union, or to belong to the union is not proper. You should be—well, we get faith like religion, you should believe in it or you don't, and I do not think an—I do not think organized groups should impose their thoughts on any individual in a plant purely for the right to work.

Q. That is, with respect to this particular situation that we are examining into, if I get you right, your opinion is that if the C. I. O. obtained a majority here and represented the productive unit or other units included, as bargaining agent, that would lead eventually to the imposition
894 of a closed shop contract on The Falk Corporation?

A. To my mind they would attempt that the first thing.

Q. And as you have indicated you are opposed to the closed shop. Is that in your opinion an infringement upon the right and liberty of an individual to join or not to join a union?

A. Right.

Q. In respect to any particular employment he goes into?

A. Right.

Q. (By Trial Examiner Batten) Mr. Koch, you would not be eligible for membership in a union?

A. I have been and might be again.

Q. Would you as foreman?

A. Right now, no.

Q. Why are you solicitous about these men who have the right when you don't have the right?

A. Well, I can tell you, it so happens as a kid out in California I had a job for three days and the union come around and demanded a $50 initiation fee, the Native Sons of California, something like that, and since then I have thought those kind of things were absolutely unfair. I think that was 12, 13 or 14 years, something like that, that I had my first experience with organized labor.

Trial Examiner Batten: Mr. Clark, have you any questions?

895 Mr. Clark: No.

Trial Examiner Batten: Are there any further questions of the witness?

(No response.)

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Trial Examiner Batten: Mr. Koch, I want to say I admire your frankness and you are to be complimented upon expressing your own opinions.

The Witness: Thank you.

Mr. Lamfrom: I think if we had more of this in the land we would arrive at a solution of those problems much more quickly.

Mr. Engelhard: Mr. Examiner, I will say that if there should be some further testimony offered later that might require Mr. Koch, we will recall him, but up to this point we feel we are through.

Trial Examiner Batten: Well, if you so desire you may recall him then.

That is all.

(Witness excused.)

Mr. Rissman: Mr. Cain.

ARTHUR CAIN a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

896 Q. (By Mr. Rissman) State your name.

A. Arthur Cain.

Mr. Lamfrom: I didn't get that.

The Witness: Cain.

Mr. Lamfrom: Mr. Rissman was talking about "Payne".

The Witness: C-a-i-n.

Mr. Rissman: I sympathize with you.

Mr. Lamfrom: I have no "pain", I thought it was you.

Q. (By Mr. Rissman) How long have you been employed by The Falk Corporation?

A. About 14 or 15 years.

Q. What is your present work?

A. General foreman, night, in the foundry.

Q. (By Mr. Lamfrom) Were you up late last night?

A. I worked last night.

Mr. Lamfrom: I see, I thought so.

Q. (By Mr. Engelhard) Are you ordinarily asleep at this time?

A. Yes.

Q. (By Mr. Rissman) You were given the privilege of appearing as a witness this afternoon?

A. Yes.

Q. But you chose this morning, didn't you?

A. Yes, sir.

Mr. Lamfrom: Well, the reason probably is obvious,
897 that he wanted to get through with it.

Mr. Engelhard: We may curtail our cross examination because the man must go home and sleep.

Q. (By Mr. Rissman) Did you hear the testimony of the preceding witness, Mr. Koch?

A. Just the last part.

Q. Did you hear his testimony with reference to the banquet at the Medford Hotel on April 22nd?

A. No, I didn't.

Mr. Lamfrom: May I interject this, Mr. Rissman: How did that happen to be designated "banquet"?

Q. (By Mr. Rissman) Was it a dinner or just a meeting of the foremen at the Medford Hotel?

A. It was a meeting, I imagine a dinner.

Mr. Lamfrom: Yes, a dinner.

Trial Examiner Batten: The only difference I suppose was, how much it cost.

Mr. Lamfrom: Well, according to that this was distinctly a dinner and not a banquet.

Mr. Rissman: Since it was run by the company it was probably a banquet.

Q. (By Mr. Rissman) At that meeting do you recall the speech by Mr. Peck, the attorney?

A. Parts of it.

Q. Can you tell us very briefly in a general way
898 what he was trying to tell the men, the foremen who were present?

A. He was trying to explain the Wagner Act.

Q. The limitations upon the foremen and what they could do and could not do in the shop?

A. Yes, sir.

Q. Regarding unions and union affairs?

A. Yes.

Q. Prior to the time of this meeting at the Medford Hotel what was your practice as foreman with relation to union affairs and union activities in the shop?

A. The same as I have.

Q. What was that?

A. Well. I am friendly with the men and I express my opinions quite freely. I don't think that changed my opinion down there any.

Q. You express your opinion with reference to unions?

A. Sometimes.

Q. As you have expressed them have those opinions been in favor of unions or opposed to unions?

A. Opposed.

Q. You have expressed those opinions to men who work under you?

A. Yes, some.

Q. As foreman you have the right to hire and discharge the employees under you?

899 A. Yes, sir.

Q. At least you do?

A. Yes, I could, I could fire them, I guess.

Q. You have fired men at different times?

A. One, I guess, since I have been there.

Q. (By Mr. Lamfrom) How many years is that?

A. I have been in that shop about nine years.

Mr. Rissman: Good men work under you.

Mr. Lamfrom: A good foreman under which the men work.

Q. (By Mr. Rissman) Have you expressed any opinions with reference to the Independent Union of Falk Employees?

A. I probably have, probably I have.

Q. Can you tell us what those opinions were as you expressed them?

Mr. Engelhard: Now, just a minute. It seems to me that ought to be limited as to who he expressed the opinion to.

Mr. Rissman: He may tell us to whom if he knows.

Mr. Engelhard: Well, you asked him if he ever expressed any opinion.

Trial Examiner Batten: I think he has stated that he has expressed an opinion. He may testify now as to what opinion he expressed, then he may explain to whom he expressed the opinion.

What opinion did you express?

900 The Witness: Why, the opinion I have expressed, that I thought the Independent Union would be better for the men in our shop.

Q. (By Mr. Rissman) To whom did you express that opinion?

A. Oh, several.

Q. Several of the employees working under you?

A. Why, I imagine Louis Meindle for one.

Q. And other employees working under you?

A. Yes, I think I have.

Q. Their names are not important.

Do you recall Mr. Kinch—pardon me.

How long have you been working nights?

A. All the while.

Q. You were working nights during the month of April?

A. Yes.

Q. Do you recall on the night of April 9th, 1937, Friday night, I believe, you appointed two men in your department to go to a meeting at twelve-thirty the following Monday, April 12th, 1937?

A. Yes.

Q. Who asked you to appoint those men?

A. I think one of the Works Council men said they were to have a meeting and wanted a couple of men to go with him.

Q. The men you appointed, did they occupy any position on the Works Council?

901 A. No, they didn't.

Q. They were just employees?

A. Just employees.

Q. Did you know what kind of a meeting they were going to have?

A. No, they said they were going to have—they were going to get together and try to have a meeting, to form some kind of a representation, as I understood.

Q. And you appointed two men in your departments to attend that meeting?

A. To go along as guests with the Works Council man.

Q. Who were those two men?

A. A man by the name of Russetti and one by the name of Gillette.

Q. Do you know if they went to the meeting?

A. Yes, they did.

Q. How do you know that?

A. They were paid for the meeting and later deducted.

Q. Why were they deducted?

A. Well, due to some law, I guess, the company wasn't allowed to pay them, so they billed it out later.

Q. The company knew that it was not allowed to contribute any moneys to men forming a union, so they deducted the money later on?

A. Well, they learned that later, I imagine.

902 Mr. Lamfrom: If there is any mystery concerning that deduction I will clear that up for you.

Q. (By Trial Examiner Batten) Who was the Works Council man that requested you to send two additional?

A. William Neal.

Q. William Neal?

A. Yes, sir.

Q. Is he the man who told you the purpose of the meeting?

A. I don't believe he did regarding the purpose of the meeting, it was just that they were going to have a meeting.

Q. (By Mr. Rissman) Did you take the matter up with any person in a superior position to you?

A. Yes, my superintendent knew of it.

Q. Who was your superintendent?

A. Mr. Buuck.

Q. What conversation did you and Mr. Buuck have as to this meeting?

A. Why, he goes home a little early and he told me to appoint anybody that would be satisfactory to Bill Neal or myself.

Q. The men you appointed, were they satisfactory to you?

A. Yes, it didn't make any difference to us.

Q. They were satisfactory to Bill Neal?

A. Yes.

Mr. Lamfrom: I started to make a statement a minute
903 ago when Mr. Rissman continued with the question, that with reference to the deduction of pay to men who attended meetings on company premises and company time, when I was informed of that I instructed The Falk Corporation that there was doubt as to the legality of it and to make deductions for such payments.

Mr. Rissman: You recognized they had violated the law and you wanted to make amends for it?

Mr. Lamfrom: I did not recognize anything. I was giving my opinion.

Mr. Rissman: And in your opinion they had violated the law?

Mr. Lamfrom: I am not on the witness stand.

Trial Examiner Batten: I presume that very incident in connection with having paid all the men who had appeared at the meeting and then later deducting it, I think that is pretty clear in the record.

Mr. Lamfrom: Yes, I wanted to give the Examiner the source of the reason for the deduction.

The Witness: It was natural for them to pay the men; they always had paid the men for their time.

Mr. Lamfrom: Yes.

Q. (By Mr. Rissman) Then why was it deducted this time, do you know?

A. Just as I said, they found out that there was a new 904 law that went into effect.

Mr. Lamfrom: You know our Wisconsin Labor Relations Act with its sharpened teeth over and above the Wagner law, was passed at the legislature in session at that time.

Mr. Engelhard: It went into effect on the 15th of April.

(Discussion off the record, as previously directed.)

Q. (By Mr. Rissman) With reference to your expression of opinions to different men around the plant have you ever expressed any opinion of various officers of the C. I. O.

A. To various officers?

Q. Of various officers to men in the plant.

A. I may have, some of my dislikes, expressed them in a friendly manner which I thought was personal conversation.

Q. There is no contention, Mr. Cain, that your expression of opinion was anything but friendly, the manner of your expression, but your expressions of opinions were in disapproval of the conduct of character of the leaders of the C. I. O., was it not?

A. There is only one I know.

Q. One leader?

Mr. Engelhard: Will you talk a little louder, Mr. Cain? We can't hear you.

The Witness: One leader.

Q. (By Mr. Rissman) And that one leader is a man 905 who has been active in organizing the employees of The Falk Corporation and other corporations in and around Milwaukee?

A. Yes.

Q. (By Trial Examiner Batten) What is his name?

A. Mr. Adelman.

Q. What opinion did you express?

A. I explained the way the C. I. O. was explained to me,

a lot of boys told me they would run the shebang, that the workers would have nothing to do with it during the strike with Mr. Adelman stepping in and saying he would take care of it, and I didn't think that was proper.

Q. Have you ever been a member of the C. I. O.?

A. No, I have not.

Q. Have you ever read its constitution?

A. No, sir.

Q. Have you ever read its by-laws?

A. No, sir.

Q. Then you are not at all familiar with the way they conduct their business?

A. No, sir.

Q. (By Mr. Rissman) Do you recall in one of your conversations with William Neal, an employee in this plant, the conversation was had about April 23rd, you said you felt sorry for Louis Meindle, Steve Foti and Bill Neal because of their membership in the C. I. O.?

906 A. No, I don't recall any such conversation with Bill Neal.

Q. Do you recall anything like it?

A. No, sir.

Q. Do you recall any conversation with Bill Neal where you mentioned Steve Foti and Louis Meindle's names?

A. I may have mentioned their names in the course of our conversation.

Q. In connection with their membership in the C. I. O.?

A. I don't think that ever come into hearing at all.

Mr. Rissman: That is all.

Cross-Examination.

Q. (By Mr. Lamfrom) These views, Mr. Cain, which you have testified to that you expressed with regard to unions, were those your own views?

A. Yes, sir.

Q. Were any of them the result of any conversations or instructions that you received from any officers of The Falk Corporation?

A. Well, we had instructions that we could not express our opinions too freely. It seems that we were not allowed to do that in the shop.

Q. I am not referring to that, but I am referring to the times at which you did express your views on unions freely.

A. That was my own personal opinion.

Q. Was it in any way an expression of your views, in 07 anyway the result of any instructions received from any official of the company?

A. No, sir.

Q. Or any reason—because of any reason that you felt ou were reflecting the views of the officials of the company?

A. No, I never felt that way about it.

Q. Do you know what the views of the officials of the company were on labor organizations?

A. Well, just as hearsay, talk that goes around, not positive.

Q. What was the hearsay talk?

A. Well, they did not want a closed shop; it never has been closed shop, and naturally it was not wanted at this time.

Q. Well, did you feel in the expression of your opinions, hat if there was a bargaining agent agreed on or decided by he Labor Relations Board, which was a better rated union, n American Federation unit or C. I. O. unit, that that would ead to a closed shop condition in the Falk plant?

A. Yes, sir, it always has in others.

Q. You were here, Mr. Cain, and heard Mr. Koch's views. n a closed shop?

A. Yes, I heard it.

Q. As he testified to them.

A. That part of his testimony, I heard that.

Q. With reference to your views on a closed shop, are 08 they the same as Mr. Koch's?

A. Very similar.

Q. Well, why is it that you are opposed to a closed shop?

A. Well, I don't think if I wanted to work down there, I hink I should be allowed to work there, whether I belonged o the same organization as the others or not, as long as The Falk Corporation would be willing for me to work.

Q. Well, you would not be eligible to one of these labor rganizations, would you?

A. No, sir.

Q. Now, when you use yourself as an example, you mean ny man should be permitted to work in the plant?

A. Any man.

Q. Irrespective of whether he is a member of any labor rganization or not?

A. That is it.

Q. Is that the principle which you believe to be consistent with real liberty as we understand it here in America?

A. I always have felt that way.

Trial Examiner Batten: I just wonder, Mr. Lamfrom, whom you mean when you say "as we understand".

Mr. Lamfrom: The witness and myself.

Trial Examiner Batten: I see.

Mr. Lamfrom: Well, I really think there could not be much argument on that question from a philosophic and sub-
909 stantially liberal point of view.

Trial Examiner Batten: I wasn't arguing.

Mr. Lamfrom: No, I know. That is all.

(Witness excused.)

Trial Examiner Batten: I believe we will recess for a few moments.

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

Mr. Rissman: Mr. Wilfer.

JOHN WILFER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) Will you state your name and position?

A. John Wilfer.

Q. What is your present occupation?

A. Machinist.

Q. Where are you employed?

A. The Falk Corporation.

Q. How long have you been employed by The Falk Corporation?

A. About 26 years.

Q. In what department are you now?

910 A. In No. 1 shop.

Q. Are you a member of any labor organization?

A. No, sir.

Q. Were you ever a member of the Works Council of The Falk Corporation, Mr. Wilfer?

A. Yes, sir.

Q. How long ago?

A. Well, I couldn't tell you offhand when that started.

Q. Were you present at the meeting of April the 12th, 1937 under the hospital in the plant?

A. I don't remember that.

Q. Do you remember a meeting called on Monday, about noontime, for the purpose of discussing some form of employee representation?

A. What do you mean, the Works Council?

Q. Well, there were present members of the Works Council and former members of the Works Council, and Mr. Falk, when there was a discussion about an independent union.

A. Yes, at that time, I was, yes.

Q. How did you happen to be at that meeting?

A. Why, I think they called us in, all the old members from the Works Council, because I served on the Works Council only six months.

Q. Who called you in?

A. That I don't remember.

911 Q. Who was the person who asked you to come to that meeting?

A. I think it was in writing.

Q. You received a little slip or note?

A. I think it was.

Q. Did you know when you went down there the purpose of that meeting?

A. No, sir, I did not.

Q. Did you ask your foreman, or tell your foreman that you were leaving the shop to go to the meeting?

A. I don't remember whether I did or not.

Q. You don't remember?

A. No, I don't remember whether I did or not.

Q. You were working days at that time?

A. Yes, sir.

Q. Do you recall what took place at that meeting, some of the discussions?

A. Well, I will tell you, there were so many talking at one time, I don't know what was going on.

Q. Did Mr. Harold Falk speak at that meeting?

A. I believe he did.

Q. Do you recall what Mr. Falk had to say at that meeting?

A. No.

Q. Pardon?

A. No.

912 Q. Do you recall anything Mr. Falk said with reference to an increase in wages?

A. No, sir, I do not. Oh, I asked him that at the meeting, I beg your pardon.

Q. What?

A. I asked him at that meeting whether he couldn't give us our raise on the 1st of May instead of the 1st of June.

Q. Why did you ask him that?

A. Because I was looking for that raise myself.

Q. Did you say anything else to Mr. Falk as to the reason why he should advance the raise from the 1st of June to the 1st of May?

A. I says, "Maybe you will avoid a lot of trouble."

Q. What did you mean by that?

A. That is something I couldn't explain, because it was for my own benefit and the rest of the men in the shop was wondering when they were going to get the raise, because it was at the Works Council when they were going to get a raise.

Q. What kind of trouble did you think the company would avoid by advancing the date from June 1st to May 1st?

A. Maybe a strike.

Q. What other trouble?

A. Well, that was all I could—

Q. Didn't you at that time, Mr. Wilfer, say that, "If the raise were advanced from June 1st to May 1st it would

913 keep a lot of these fellows from joining the C. I. O."?

A. Absolutely no.

Q. Did you say anything like that?

A. No, sir, I did not.

Q. Did you say anything with reference to labor unions?

A. No, sir, I did not.

Q. All you said was that "if the raise were advanced from June to May it would save a lot of trouble"?

A. Absolutely, that is what I said.

Q. And the trouble you had in mind was the strike?

A. Yes, sir.

Q. What talk had there been around the plant about the strike, possibility of a strike that you maybe—that made you feel that trouble might come?

A. Well, I wasn't thinking about any strike at that time, but I know at that time the Works Council was still going on and the fellows in the shop were getting kind of riled up

because they knew that there was a raise coming on, and why they didn't get it. They knew that.

Q. What were some of them doing or saying while they were wondering why the raise didn't come?

A. Because they were wondering what the Works Council was doing, they were not doing anything for the workman at all. That was what they were saying.

Q. Were they saying anything else with reference to 914 labor organization?

A. Yes, they were.

Q. What were they saying?

A. Because most of them, most of them—I wouldn't say most of them, but I would say that some of them have joined the C. I. O.

Q. In other words they said "The Works Council is not doing anything for us, this raise is slow in getting here, or we should join the C. I. O.", words to that effect?

A. No, I didn't hear them say that.

Q. I don't mean those words, but with that feeling in the plant, general feeling in the plant?

A. No, not according to my feeling.

Q. The feeling of the other men?

A. Well, I don't know, I could not read their minds.

Q. But you do say that they were disappointed with the slowness of the raise and they were disappointed with the lack of activity by the Works Council?

A. Yes, sir.

Q. And because of that they decided, some of them, to join the C. I. O.?

A. Maybe they were, and maybe it wasn't that, I couldn't say.

Q. You just said that.

Mr. Engelhard: He said he could not read the men's 915 minds.

Q. (By Mr. Rissman) You testified a few minutes before, you said you couldn't read their minds, that some of them as a result of that were joining the C. I. O., did you not?

A. Maybe they were, I don't know; maybe on that, I can't—

Q. But you do know that a number of them were joining the C. I. O.?

A. Sure they were joining the C. I. O.

Q. Do you feel or do you know, Mr. Wilfer, whether or not

the advancement of the raise from June 1st to May 1st prevented a number of men from going into the C. I. O.?

A. I don't know.

Q. Do you feel, and give us just your opinion, as to whether or not the C. I. O. would have gained more members if the company had granted the wage increase on June 1st rather than advanced it to May 1st?

A. I don't know.

Mr. Engelhard: That is objected to.

A. I don't know.

Trial Examiner Batten: He has answered, he said he does not know.

Mr. Engelhard: All right.

Q. (By Mr. Rissman) Have you any opinion?

Mr. Lamfrom: I object to that.

A. I have my own opinion.

916 Q. (By Mr. Rissman) What is that opinion?

Mr. Lamfrom: Just a minute, I object to that.

Mr. Rissman: The witness can testify as to his opinion.

Trial Examiner Batten: Just a minute, let's hear what the objection is.

Mr. Lamfrom: Well, it calls for a mere speculative opinion. How can he tell whether or not more would have or not. That depends on a lot of human reactions, human emotions and human events.

Mr. Rissman: I don't think—

Mr. Lamfrom: Just a minute, Mr. Rissman, you have a habit of interrupting your opponent when he is making a statement for objection.

Mr. Rissman: I am reflecting—

Mr. Lamfrom: Now, you are interrupting me again, just keep quiet for a minute.

I say, that cannot shed any light upon this controversy, what his opinion was, as to whether this wage raise stimulated or did not stimulate membership in the C. I. O. That may be dependent upon a thousand elements.

Trial Examiner Batten: Well, at this time in order to settle the question of witnesses expressing their opinion, the Examiner is going to very definitely rule and sustain the objection to this question. I think it is quite immaterial what this witness' opinion is.

917 If the conversations which took place, the facts that occurred are shown, I think the Trial Examiner can draw his own conclusions as to what effect these matters had upon the C. I. O. or the A. F. of L. or the Independent Union.

So, if the facts are shown, what the various people said, what they did on these matters, the Examiner can draw his conclusions as to what effect those things have.

Q. (By Mr. Rissman) Mr. Wilfer, when you said to Mr. Falk that by advancing the date of the pay increase from June 1st to May 1st he might avoid a lot of trouble, what did Mr. Falk say?

A. Oh, that I don't remember.

No, I will take that back. He said, "I think we can." He says, "I will see."

Q. And the raise, as you know, was actually advanced to May 1st?

A. Yes, sir.

Q. Do you know, Mr. Wilfer, from your experience around men, and as a man who has been employed for a number of years, what effect that increase had upon the men with reference to their joining or not joining the C. I. O.?

A. I don't know.

Mr. Lamfrom: That is objected to. Just a minute.

Trial Examiner Batten: He has answered he does not know.

918 Mr. Lamfrom: Now, Mr. Wilfer, just wait a minute. When the learned counsel for the National Labor Relations Board asks you questions give us a chance to object to them, if we feel they should be objected to, before you answer.

Q. (By Trial Examiner Batten) Mr. Wilfer, after the raise was granted, did you hear any further talk at the shop similar to that which you heard before the raise was granted?

A. Well, I suppose they joined the C. I. O. after the raise was granted.

Q. Was there any further discussion in the shop among the men showing that they were dissatisfied with the Works Council or because the raise had not been granted; in other words, did it have any effect on the talk in the shop?

A. Well, I don't know, I talked with Mr. Landry and I talked with some more C. I. O. men, and it was mostly foolish, "everybody is not getting enough money".

Q. What I asked was, did you see any difference between the dissatisfaction in the shop before the raise was granted and after the raise was granted?

A. No, the same thing.

Q. In other words, it was exactly the same?

A. The same thing.

Q. (By Mr. Rissman) Do you feel, Mr. Wilfer, that after

the raise was moved up from June 1st to May 1st the cause of this trouble that might have happened had been re-
919 moved?

A. No.

Q. You felt that there was just as much possibility of trouble?

A. Sure.

Q. So that the advancement of the raise date from June 1st to May 1st did not accomplish its purpose?

A. No.

Q. The men, regardless of the fact that they got their raise a month earlier—

A. Yes, sir.

Q. —were still going to the C. I. O.?

A. Yes, sir.

Q. But do you know what the purpose of the advancement of the raise was?

A. No, sir, I don't.

Q. Except as you stated before, to avoid trouble?

A. To avoid trouble, that was all.

Mr. Rissman: That is all.

Cross-Examination.

Q. (By Mr. Engelhard) Mr. Wilfer, are you positive that the conversation you testified to which was had between you and Mr. Falk was on the 12th of April?

A. Oh, I don't remember that.

Q. All right. Now, that may have occurred prior to the Works Council meeting, may it not?

920 A. I don't remember.

Q. Well now, if the records of the Works Council show that on April 8th the wages were increased effective May 1st, 1937—

A. Yes.

Q. —would that in any way refresh your recollection as to whether or not that conversation occurred prior to May 8th or on May 8th?

A. Oh, I don't remember that.

Mr. Engelhard: Mark this Respondent's Exhibit 3 for identification.

(Whereupon, the document above referred to was marked Respondent's Exhibit No. 3 for identification.)

Q. (By Mr. Engelhard) Mr. Wilfer, look at Respondent's Exhibit No. 3. Were you a member of the Works Council?

A. Yes, sir, not on that date.

Q. Were you present at the meeting of April 8th?

A. I wouldn't say, I don't know.

Q. Well, the records show you were not.

Now, do you know when you had a Works Council meeting prior to April 8th?

A. That is a long time, I don't remember that; that is a long time ago.

Mr. Engelhard: I offer in connection with the cross-examination, Mr. Trial Examiner, the minutes of the meeting
921 of April the 8th, together with the mimeographed form of statement furnished to the meeting, and I call attention to the fact that in the Falk Corporation's statement to the meeting of April 8th there is this:

"Effective May 1, 1937, we propose to increase the pay of all hourly workers now receiving 50 cents per hour, or under, approximately 10 cents per hour, and those now receiving 60 cents per hour, or over, will be increased approximately 5 cents per hour.

"However, there is reserved to the company the right to vary from this procedure to the extent of giving such attention to each case and making adjustments thereto in individual cases as in our judgment seem advisable. As was the case in the increase given January 1, 1937, we will give careful attention to those in the lower wage brackets, but here again the adjustment will be made upon the basis of merit. At the same time piecework rates will be adjusted up in an amount according to"—"equal to approximately 5 per cent. Apprentice schedules have been handled separate from this arrangement."

Trial Examiner Batten: Of course, if there is no objection it will be received.

Mr. Rissman: I object to the introduction of this exhibit.

Trial Examiner Batten: It will be received without
922 any reference to this witness' testimony, as he was not present at this meeting.

Mr. Engelhard: No, but I wish to offer it, Mr. Examiner, for this reason, that he was asked whether or not there was an advancement made as to the increase from June 1st to May 1st; I merely show this for the purpose of the record, to show that if this testimony that the advancement of wages was made from June 1st to May 1st, the records show that the advancement was already in as early as May 8th.

Trial Examiner Batten: Of course with respect to this witness it is absolutely immaterial what the exhibit shows.

The witness has testified that at the meeting of April 8th Mr. Falk, in answer to his question, made a statement with respect to the increase in wages, and as I say, the exhibit will be received without any reference to this witness' testimony, if there is no objection.

Mr. Rissman: I object.

Trial Examiner Batten: Without any reference to this witness' testimony.

Mr. Rissman: I object to the introduction of this document.

First, it has not been identified by any witness.

Secondly, we have the testimony of the secretary of the Works Council that usually eight days to two weeks elapsed between the time of a meeting and the time of preparing
923 the minutes.

Thirdly, we have the testimony of Mr. Harold Falk, the vice president of the company, that originally the wage was scheduled—the increase was scheduled to be given June the 1st, but after a conversation at the meeting of April 12th and a statement by some employee—he didn't remember the employee, and the employee now testifying was—he agreed to advance the date from June 1st to May 1st, and that statement in those minutes is entirely improper, because we have no understanding and no testimony with reference to the minutes, when they were written, who supervised them, who corrected them or changed them.

Mr. Engelhard: Now, in regard to that increase, when I asked Mr. Wilfer whether or not the conversation he testified to that he had with Mr. Falk, that occurred between him and Mr. Falk was on April 12th, and to that he said he did not know and was not certain.

924 Trial Examiner Batten: I do not think there is any question in the witness' mind but what it occurred at this meeting that took place, the one which he says he was called to by written notice, I don't think there is any question in the witness' mind about this conversation taking place at that time, and this witness did not attend this Works Council meeting and has so stated.

Mr. Rissman: He was a member of the Works Council—

Trial Examiner Batten: The objection will be sustained as to this point, that there is no foundation laid for its introduction nor has it been identified.

Mr. Engelhard: Well, I think we will withdraw it for the time being.

Q. (By Mr. Engelhard) Mr. Wilfer, who else was at this meeting besides Mr. Harold Falk?

A. Well, they were all old members from the old Works Council, and I was on the Works Council for the first six months; then we discussed of course—

Q. (By Mr. Rissman) In 1933?

A. How?

Q. In 1933, when it was first organized?

A. I don't remember, I couldn't say.

Q. (By Mr. Engelhard) Who was in attendance at that meeting besides Mr. Harold Falk and the men that you stated?

A. Well, after thinking it over and writing it all down,
925 I could name—there may have been 15 or 20.

Q. Well, are you sure that Mr. Harold Falk was there at that meeting?

A. Yes, sir, because they have called him.

Q. When did this meeting start?

A. I couldn't say, maybe one o'clock, maybe half past one.

Q. Do you know when the meeting ended?

A. I have no idea. I think I went home at 3 o'clock. We only wanted to know about the Wagner bill, and at that time, as he expressed it, he didn't know much about it.

Q. You are speaking of Mr. Harold Falk?

A. I wouldn't say whether it was Mr. Harold Falk's son or whether it was Mr. Harold Falk.

Q. Was there anyone else there from the company?

A. Yes, Mr. Kreger and Mr. Greget—

Q. I am not speaking now of employees; I am speaking of the company, the management.

A. There was nobody else there, it was either Mr. Dick Falk or Mr. Harold Falk, I wouldn't say.

Q. Well, did you see Mr. Harold Falk there at the meeting?

A. I wouldn't say for sure.

Q. But you stated that you and he had a conversation at that meeting.

A. That was a couple of weeks before, and at this meeting I asked him if he couldn't advance that raise; may-
926 be it was Mr. Harold Falk, I asked this point-blank, if he couldn't advance that raise, because I had talked to him previously before the meeting.

Q. You mean this meeting of April 12th?

A. I don't know what date.
Q. You said that Mr. Harold Falk was there?
A. Yes, he must have been there, because I asked him if he was going to advance that increase in pay.
Q. How long was he there?
A. Maybe 15 minutes.
Q. Was it at the beginning or at the end of the meeting?
A. The beginning, we called him.
Q. He came there at the beginning?
A. Well, we were just chewing the rag and smoking cigaretts, you knew.
Q. Was there any formal meeting then?
A. No.
Q. Did anybody act as chairman?
A. No.
Q. When you say you were sitting around chewing the rag, by that you were having a general discussion about things?
A. That was all.
Q. What was the discussion?
A. Oh, I don't remember that; there were so many talking at one time, you couldn't—
927 Q. Was there any collection taken up at that meeting?
A. No, sir, not that I saw.
Q. You don't know who called that meeting?
A. No, sir, I don't know who called that meeting.
Q. On direct examination you were asked—
A. I think they called us in.
Q. But you don't know who called you?
A. I don't know who called us in, so nebody called us in, but I don't know,—I mean the instigator of calling this meeting, that is something I don't know.
Mr. Engelhard: That is all.

Redirect Examination.

Q. (By Mr. Rissman) Mr. Wilfer, who handed you the slip of paper telling you to come to the meeting?
A. I think it was the office boy.
Q. And the office boy is generally the one who walks around and distributes notices of the company?
A. Mail.
Q. And mail and any messages they want the men to get.

A. Yes.
Q. Where were you when you received this message?
A. At my machine.
Q. You were working?
A. Yes, sir.
Q. For how long were you absent from your work?
928 A. What do you mean?
Q. In attendance at that meeting.
A. Well, my machine runs for three or four hours, and I don't do nothing.
Q. But you were not watching the machine, you were not working?
A. I don't have to watch it.
Q. You were not working?
A. No, I wasn't working, I was just standing around.
Q. How long were you at the meeting, away from the place where you usually stand when you watch your machine?
A. Well, maybe I was away from the machine, maybe, two hours.
Q. You were paid for that time?
A. How?
Q. You were paid for the time?
A. Yes, sir, my machine was cutting.
Q. And later on that sum was deducted from your pay?
A. Off of my pay?
Q. Yes.
A. Not off of my pay, because I left that machine running.
Q. You never got any deduction of this money received for attending the meeting?
A. No, because I walk all over the shop.
Q. There isn't any doubt in your mind about the conversation between you and Mr. Harold Falk about this
929 wage increase, is there?
A. Well, I thought I would ask him if we could—I thought I would ask him, if we got it, all well and good, and if we didn't—
Q. Well, I mean there is no doubt in your mind now that that conversation occurred between you and Mr. Falk?
A. I don't quite get that.
Trial Examiner Batten: I think it is quite clear, Mr. Rissman, from the evidence, there isn't any doubt about the fact that there was a conversation.
Mr. Rissman: That is all.
Mr. Lamfrom: That is all.

Trial Examiner Batten: That is all, Mr. Wilfer.
The Witness: All right, thank you.
(Witness excused.)
Mr. Rissman: Is Mr. Adamski here?

STANLEY JOSEPH ADAMSKI, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) What is your name please?
A. Stanley Joseph Adamski.
Q. How long have you been employed by The Falk Corporation?
930 A. It will be 16 years—
Q. In what capacity?
A. Core maker.
Trial Examiner Batten: What?
The Witness: Core maker.
Q. (By Mr. Rissman) And how long have you been a core maker, Mr. Adamski?
A. How long have I been a core maker?
Q. How long have you been doing that work?
A. 16 years.
Q. Are you a member of any labor union?
A. I think the Independent is labor union.
Q. You are a member of the Independent, and you are not sure whether it is a labor union?
A. I am a member.
Q. You are a member of the Independent Union of Falk Employees?
A. Yes.
Q. By "labor union," you were thinking of some other type of organization?
A. I wouldn't say.
Q. Well, is there any distinction in your mind between the kind of organization the Independent is and a labor union?
A. It is just because of the law, there is some confusion now whether the Independent is an organization or not;
931 that is the dispute, that is what the papers say.
Q. Well, do you know if that confusion exists in the minds of the members of the Independent?

A. I would not say that.
Q. How long have you been a member of the Independent?
A. Ever since it was organized.
Q. Were you present at the first meeting where it was—where its organization was discussed?
A. Yes, sir.
Q. Were you a member of the former Works Council?
A. Yes, sir.
Q. Up to the time of its last meeting?
A. Yes, sir.
Q. Did you attend the meeting of April 8th, 1937?
A. Yes, sir.
Q. Do you recall any conversation or discussion at that meeting with reference to the necessity of abandoning the Works Council?
A. No, sir.
Q. Was there anything said at that meeting to the effect that it would be necessary to give up the Works Council because it is now against the law?
A. Yes, sir.
Q. Who said that?
A. I think it was Mr. Green.
932 Q. Mr. Green, the superintendent?
A. Yes, sir.
Q. What else did Mr. Green say?
A. That was all he said.
Q. Who was it that made the statement with reference to the fact that if the Works Council goes out of existence, "We ought to have some other kind of organization to take its place"?
A. I don't remember of a statement like that.
Q. Do you remember any statement like that?
A. Just what was said by our Works Council representatives.
Q. That is what I mean, was there anything like that?
A. That was when eight of us fellows was talking.
Q. Of the employee representatives, was there a discussion among those men as to the advisability of getting a new organization to take the place of the Works Council?
Mr. Lamfrom: Are you talking about the discussion at this meeting, or talking about some other discussion?
Q. (By Mr. Rissman.) On April 8th, the day of the last meeting.

A. That was the meeting of the Works Council and management.

Q. Now, on April 8th, when you had a meeting of the Works Council, there were really two meetings, one where the fellows got together by themselves, and a regular

933 Works Council meeting, is that right?

A. Yes, sir, one the day previous.

Q. The day previous?

A. Yes, sir.

Mr. Lamfrom: Will you talk a little louder, please, Mr. Adamski, so that we can hear you.

Q. (By Mr. Rissman.) At the meeting the day previous or the Works Council meeting itself, at either one of those two meetings, was there any discussion or statement or conversation between the men as to the necessity of having a new organization to take the place of the Works Council?

A. Yes, sir.

Q. Who made that statement?

Trial Examiner Batten: At which meeting?

Q. (By Mr. Rissman.) Which meeting?

A. April 7th.

Q. And who made that suggestion?

A. Our chairman, John Brever.

Q. The purpose of these meetings, before the Works Council meeting, was to take up matters that would later be presented to the Works Council?

A. To the management.

Q. Was there anything said at the meeting of April 8th about this same subject?

A. I don't remember.

934 Q. Was there anything said at the meeting of April 8th about a meeting to take place shortly afterwards, for the purpose of discussing or creating a new organization, to take the place of the Works Council?

A. No, sir.

Q. Was there anything said at the meeting of April 8th with reference to asking the permission of Mr. Falk for the use of company premises for a meeting?

A. No, sir.

Q. Don't you remember it?

A. There wasn't no such thing as that occurred.

Q. Did you attend the meeting that was held the following Monday, on April 12th?

A. Yes, sir.

Q. Who told you about that meeting?
A. John Wolf.
Q. Who is John Wolf?
A. He was more or less acting as secretary to our chairman, John Brever.
Q. When was the first time you heard there was going to be a meeting on April 12th?
A. That was the 12th of April.
Q. You didn't know about it before that time?
A. I knew there was something said about it.
Q. What was said about it?
935 A. Well, we on the Works Council thought we would get an independent union going.
Q. And what else was said about it?
A. I don't believe there was much more said about that.
Q. Did you take part in the discussion about getting an independent union going?
A. Yes, sir.
Q. What did you say?
Trial Examiner Batten: When was this discussion, and where?
Q. (By Mr. Rissman) April 7th you are talking about?
A. No, sir.
Q. Well, before?
A. You had April 12th in here already.
Q. Before April 12th, when was the first time you knew there was going to be a meeting to create an independent union?
Mr. Goldberg: I think he answered that, he said April 12th.
Mr. Rissman: Read the answer.
(The record was read.)
The Witness: The 7th of April.
Q. (By Mr. Rissman) The 7th of April. Did you take part in the discussion of April 7th?
A. Yes, sir.
Q. You said nothing was said on April 8th about an in-
936 dependent union or any kind of union?
A. No, sir.
Q. When was the next time after April 7th that you knew about the independent union, before April 12th?
A. I did not know anything more until April 12th.
Q. You said that John Wolf told you about it on April the 12th?

A. Yes, sir.
Q. How did he tell you about it, and where?
A. Well, he says "We are getting all the old Works Council men together and we are going to get as much as we can"—
Q. Where did you meet?
A. Below the hospital.
Q. Did you get permission from your foreman to leave your work to go to that meeting?
A. Yes, sir.
Q. Who was your foreman?
A. Joe Dozey.
Q. What did you tell Joe Dozey?
A. I said "I am going to that meeting."
Q. Did you tell what kind?
A. No, sir.
Q. Did he ask you?
A. No, sir.
Q. Why didn't he ask you?
937 A. He never asked me; he knew I was active on the Works Council, and all I said was, "I was going to the meeting."
Q. And he said "All right"?
A. "O.K."
Q. When you got to this meeting, who was there?
A. About 23 fellows were there.
Q. It was held under the hospital on company property and on company time?
A. Right.
Q. And at that meeting you discussed the creation and formation of an independent union?
A. Yes, sir.
Q. When did Mr. Harold Falk come into that meeting?
A. I think it was late in the afternoon.
Q. Some of the boys sent for him?
A. Yes, sir.
Q. Why did they send for him?
A. They wanted to know the low-down on the Wagner Act.
Q. They wanted to get some information as to how to proceed?
A. Yes, sir.
Q. And Mr. Falk said he couldn't give you the information?
A. No, sir.

Q. What did he say?

A. Let's see—well, he said, as much as he knew about
938 it, he explained about the Wagner Act.

Q. At that time did he say anything about the A. F. of L. or the C. I. O.?

A. No, sir.

Q. Don't you recall that at that time he said that—he pointed out to you that the A. F. of L. and the C. I. O. were having difficulties and the best thing for the employees to do was to have an independent union not connected with either the A. F. of L. or the C. I. O.?

A. No, sir.

Q. He didn't say anything like that?

A. No, sir.

Q. Were you in the courtroom Monday?

A. Yes, sir.

Q. Did you hear Mr. Falk's testimony?

A. I heard some of it.

Q. Were you here when he testified about what he said at that meeting?

A. I don't believe so.

Q. (By Trial Examiner Batten) What did Mr. Falk say at the meeting?

A. Well, we wanted to know about—wanted him to explain to us about this Wagner Act.

Q. I know, but what did he say to the men? Tell me what he told you, what did he say?

939 A. Well, I couldn't give it word for word.

Q. Well, tell me, if you remember what he said?

A. He said, he explained about the Wagner Act, that the Works Council was all washed up, and that was all he had to say.

Q. Well, how long was he there?

A. I would say about five minutes.

Q. It didn't take five minutes to say that?

A. No, I wouldn't say so.

Q. Haven't you any recollection? Did he make any explanation of the Wagner Act?

A. No, sir.

Q. Did he tell you what rights you had to organize a union?

A. That was what we wanted to know more or less from him.

Q. What did he tell you your rights were, when you come to organize the union?

A. We had as much right as any organization, if we wanted to organize.

Q. What else did he say to you about organizing?

A. That is all I remember.

Q. (By Mr. Rissman) Now, was anything said at that meeting by Mr. Falk in connection with the raise?

A. Yes, sir.

Q. What was said and by whom?

A. Well, John Wilfer said, "Well, Mr. Falk, how
940 would you like to move that raise up from June the 1st up to May 1st". That was all.

Q. What else did John Wilfer?

A. That is all I know.

Q. What did Mr. Falk say?

A. Well, he says "All right."

Q. You remember that?

A. I remember that.

Q. What else happened at that meeting? Did Mr. Falk leave after he finished?

A. Yes, sir.

Q. What happened after he left?

A. I don't think there was much happened after he left.

Q. Did you discuss ways and means of forming an independent union?

A. I think we did.

Q. Did anybody discuss the advisability of joining a union affiliated with the A. F. of L. or the C. I. O.?

A. I don't understand that question.

Q. Did anybody mention anything about joining the C. I. O. or the A. F. of L., or did they just discuss an independent union?

A. That was what we were there to discuss, an independent union.

Q. And what was the final problem that was decided
941 upon or the final solution decided upon when that meeting closed?

A. Well, it was to get a lawyer.

Q. Was a committee appointed for that purpose?

A. Yes, sir.

Q. Were there any lawyers' names suggested at this meeting?

A. Yes, sir.

Q. Who were some of the lawyers whose names were suggested there?

A. Mr. Padway was suggested.

Q. Joseph A. Padway?

A. That is right.

Q. Did you know he was counsel for the Milwaukee Trades Council, the A. F. of L. and other labor organizations?

A. Yes, sir.

Mr. Goldberg: Who is our good friend.

Q. (By Mr. Rissman.) Who suggested Mr. Padway?

A. Mr. Landrey.

Q. Mr. Landrey is at present the president of the C. I. O. local?

A. Yes, sir.

Q. Was there any discussion about the advisability of engaging Mr. Padway to create an independent union?

A. No, there was no discussion at all about it.

Q. Were there any other lawyers' names suggested?

A. No, sir.

942 Q. Did the men decide not to use Mr. Padway at that meeting?

A. It wasn't decided—it was just—I imagine more in the minds of the men, that he was affiliated with the A. F. of L. and stuff, so they just forgot that the man's name was mentioned.

Q. I suppose they thought it was a rather ridiculous suggestion of Mr. Padway's name for the creation of an independent union?

A. Correct.

Q. They didn't want to take such chances, did they?

Mr. Lamfrom: What chances would they be taking if they were able to get Mr. Padway?

(Discussion ensued outside the record, as previously directed.)

Q. (By Mr. Rissman) What was physically done about getting a lawyer?

A. Well, three fellows were selected to go and see Mr. Harold Falk.

Q. Why was it necessary to go and see Mr. Harold Falk for a lawyer for your union?

A. Because as I said, the only fellow's name which was mentioned was Mr. Padway, and we didn't think we wanted him.

Q. There were 23 men present at this meeting?

A. Correct.

943 Q. About 23?

A. About 23.

Q. And none of them could think of the name of a lawyer without the assistance of Mr. Falk?

A. No, sir.

Q. Whose idea was it to go to Mr. Falk?

A. The acting chairman's, John E. Wolf.

Q. John Wolf thought it would be a good idea to appoint a committee to go and see Mr. Falk for a lawyer.

A. Right.

Q. Were there any objections to that procedure?

A. None at all.

Q. The men felt that a good idea, that Mr. Falk could suggest or recommend a lawyer who could create your union for you.

A. Right.

Q. Who was on the committee that went to see Mr. Falk?

A. Johnnie Mitchka, Leslie Greget and myself.

Q. When did you see Mr. Falk, the same day?

A. I think the same day.

Q. You three went to his office?

A. Went to his office.

Q. During work hours?

A. Yes, sir, while the meeting was in session; the fellows waited for us to come back.

944 Q. They waited for you to bring a report?

A. Yes, sir.

Q. And what conversation took place in Mr. Falk's office then?

A. Well, we just went up to see if he could recommend a lawyer to us.

Q. And who was the spokesman, and what did he say,—which one of you three men?

A. I think it was Mr. Greget, I think, talked to him.

Q. What did Mr. Greget say?

A. Well, that he could recommend a lawyer to us, as long as we wanted to form a union.

Q. Was Mr. Falk told that Mr. Padway's name had been mentioned in the prior meeting you had?

A. I don't remember that.

Q. And in the opinion of the men would Mr. Padway have been acceptable to the company as attorney for the union?

Mr. Lamfrom: I object to that. There is no evidence—

The Witness: I don't get that.

Mr. Lamfrom: —on which to base any such question.

Trial Examiner Batten: Well, I will sustain the objection. I don't think he is qualified to answer it.

Q. (By Mr. Rissman.) What did Mr. Falk say when you asked him for an attorney to form your Independent Union?

A. I think he suggested two or three fellows.

945 Q. Did you finally go to one of the men he suggested?

A. Go the man—

Q. Did you finally engage a lawyer that Mr. Falk recommended?

A. Yes, sir.

Q. And that lawyer—

Mr. Clark: Just a minute, I object to the form of that question. He didn't recommend any lawyer.

Mr. Rissman: Suggested.

Mr. Engelhard: Suggested—

Mr. Rissman: Or mentioned, I don't care about the word.

Mr. Lamfrom: Why don't you ask him what was said?

Q. (By Trial Examiner Batten.) When you asked Mr. Falk to name certain lawyers, what lawyers did he name?

A. I know he named Mr. Burke.

Q. Who else?

A. I couldn't tell you who the other fellows were.

Q. (By Mr. Rissman.) Did he say anything about Mr. Burke besides mentioning his name?

A. No, sir.

Q. Did he say anything about any other lawyers?

A. No, sir.

Q. Just tell us how it happened that Leslie Greget came and said "I would like—we want a lawyer for our union."?

A. "We would like to form an organization, we are not professional organizers" and we knew that we were workers.

946 Q. You said you were not professional organizers. You mean your—you mean you recognized your inefficiency and for that reason you would go up for advice?

A. Yes, sir.

Q. A professional organizer like Mr. Adelman would not do anything like that?

A. I don't believe it.

Mr. Clark: May I ask, Mr. Examiner, that counsel be asked to remain seated?

Trial Examiner Batten: Well, I don't know that he needs to be seated. Probably it will be better if you stand back—

Mr. Rissman: Do you object if I stand here?

Trial Examiner Batten: —for the purpose of the witness speaking louder. That is the only objection I see.

Mr. Rissman: What is your objection, Mr. Clark?

Mr. Clark: Well, I think the closer you keep the witness, it has a tendency to confuse him.

Q. (By Mr. Rissman) Are you being confused?

A. I wouldn't say that.

Mr. Lamfrom: I don't think Mr. Rissman intentionally and negligently would confuse anybody, I don't think he means to do that.

Mr. Rissman: Thank you.

Mr. Lamfrom: I don't think the fact that he is walking
947 around is confusing to a living soul.

Mr. Rissman: Except Mr. Clark.

Trial Examiner Batten: You may proceed, Mr. Rissman.

Mr. Engelhard: Will you talk up a little louder, Mr. Adamski, so that we can hear you.

Q. (By Mr. Rissman) Tell us just exactly what Mr. Falk said when Mr. Greget finished his statement?

A. As I recall, just recommended a lawyer to us. Well, when he got Mr. Burke in there, he mentioned I think two or three fellows.

Q. And did Mr. Falk make an appointment for you with Mr. Burke?

A. Yes, sir.

Q. Did any of you three men, you, Leslie Greget or John Mitchka, ever know anything about Mr. Burke before the time you heard Mr. Falk mention his name?

A. I don't know if the other fellows did, but I didn't.

Q. Did any of you ask Mr. Falk what kind of lawyer Mr. Burke was?

A. Well, he was just capable of handling this job that we wanted done.

Q. Did you ask Mr. Falk that?

A. Yes, sir.

Q. And Mr. Falk told you?

A. Yes, sir, he thought he was capable of handling this.

948 Q. Did you ask Mr. Falk what Mr. Burke's special qualifications for this work were?

A. No, sir.

Q. You accepted Mr. Falk's statement that he was capable.

A. Right.

Q. When did you go to see Mr. Burke,—or did you go to see Mr. Burke the following morning, who went?

A. Ten of us fellows were picked out to go and see him.

Q. You were one of them?

A. Yes, sir.

Q. And where did you see Mr. Burke?

A. At his office.

Q. Can you tell us who was the spokesman for you men at that meeting?

A. I imagine we all were.

Q. All of you took turns in speaking?

A. Yes, sir.

Q. Who was in the office besides you ten men and Mr. Burke?

A. Mr. Clark come in.

Q. Mr. Clark, the gentleman seated at the table here?

A. Correct.

Q. Representing your union.

A. Yes.

Q. You nodded your head. Will you answer "Yes"?

A. Yes.

949 At that meeting can you recall what requests or what statements were made by members of your committee to Mr. Burke or to Mr. Clark?

A. Well, we got there with the intention of organizing an independent union, and we wanted to know whether we were within the law to do so.

Q. Did you indicate to Mr. Burke or to Mr. Clark how their fee would be paid or by whom?

A. Yes. sir.

Q. And what was that indication?

A. I don't quite get that.

Q. Well, how did you indicate that their fee should be paid, what was said?

A. Well, after about an hour after we first got there, I personally got up and said to Mr. Burke, "Before we go any further what are the fees going to be?"

Q. And what was said?

A. And he said, "Well, you fellows don't have to worry

about it;" he said "if this thing falls through, he will take the rap".

Q. Did he say what would happen if it didn't fall through?

A. No, sir.

Q. He says he will do it as a matter of charity? Just to see if it would be successful or not?

A. He didn't say "charity".

950 Q. I mean, to take the rap, to use your words.

A. That was the way we understood.

Q. He says "Well, let it go without a fee."

A. That was just about the way.

Q. He did not indicate to you he would want you 23 men to be responsible for any fee to him?

A. Although we made a collection of one dollar from each man, different men, to send this ten fellows—

Q. How much did you collect there?

A. $17 I guess.

Q. You did not turn that over to Mr. Burke and Mr. Clark the next day?

A. No, sir.

Q. You didn't tell them about it?

Q. (By Trial Examiner Batten.) Did you make any agreement with Mr. Burke as to the payment of his fee?

A. Not at that first meeting.

Q. There was no agreement made as to the fee to be paid to him?

A. No, sir.

Q. (By Mr. Rissman.) Whose idea was it at that meeting, the men's or the attorneys', as to whether or not the union should be incorporated by the State of Wisconsin?

A. It was the men's idea.

Q. Why did the men want it incorporated? Do you know?

951 According to law I think you had to be incorporated.

Q. Is that right?

A. Personally I don't know.

Q. Do you know why the men felt it should be incorporated?

A. Well, I couldn't answer that.

Q. What was done at that meeting in addition to the request made by the union men or the ten employees, and the advice given by Mr. Burke and Mr. Clark? Was there any action taken?

A. Yes.

Q. What?
A. Well, he drew a paper for us; he got our organization all set up.
Q. Charter and articles of incorporation?
A. Yes.
Q. And in the usual manner you received a certificate from the secretary of State, or did that come later? Are you an officer of the union?
A. Yes, sir.
Q. What is your office?
A. Treasurer.
Q. You are one of the charter members. Does your name appear on the articles of incorporation?
A. No, sir.
Q. Whose names do appear, do you know?
A. Fred Wilson, Joe Trost, and Carl Menz, if I am
952 not mistaken.
Q. Were any other meetings at the plant with the men, to report to them the action of the attorneys and the Committee?
A. I think there was.
Q. And where and when were those meetings?
A. If there were any, why, they were below the hospital.
Q. In the factory?
A. Right.
Q. On company premises?
A. Right.
Q. And on company time.
A. Right.
Q. And the men were paid for attending these meetings?
A. I imagine.
Q. And later deducted?
A. That is right.
Q. How much was deducted from you later on?
A. I think it was $7.80.
Q. What was your rate?
A. 75 cents,—no, at that time it was 65 cents an hour.
Q. About 12 hours' pay, made, say, between 10 or 12 hours deducted, or more.
A. Ten or 12 hours.
Q. When was it first decided by the employees, by your committee and others, to hold your meetings outside of
953 company property?
A. Sure it was decided.

Q. When?
A. I couldn't just say when.
Q. What led up to that decision? Did the company refuse to continue to giving you premises, or what happened?
A. We were told we can't use those premises.
Q. By whom were you told that?
A. I couldn't tell you.
Q. Somebody from the company or was that your lawyer that advised?
A. I couldn't say.
Q. Were you told why you couldn't use the company premises?
A. Yes.
Q. What was the reason given?
A. Because the Wagner law or Act called for that.
Q. It was against the law?
Mr. Engelhard: Just a moment, was that the Wagner Act only, or also the Severson Act discussed?
The Witness: There were two acts there, weren't there?
Q. (By Mr. Rissman.) Since we are on the subject of two acts, what was it that led to the termination of the Works Council, do you know?
A. I think it was the Severson Act.
Q. And by the "Severson Act," you refer to the Wis-
954 consin Labor Relations Act?
A. Correct.
Q. Which in its main effect, if not in detail, follows the National Labor Relations Act.
Mr. Lamfrom: Might we add "does not follow it."
Mr. Rissman: Would you, Mr. Lamfrom, wait for him to go ahead and make his statement?
Mr. Lamfrom: I understood you, but he didn't.
Q. (By Mr. Rissman.) It is similar to the National Labor Relations Act?
A. As much as I know about it.
Mr. Engelhard: Just a moment, Mr. Adamski, if you know. Have you ever read the Act?
Trial Examiner Batten: Well, I don't assume he would say something he don't know anything about.
Mr. Lamfrom: Well, I know, of course, but he is just leading the witness on and on and having him give opinions about things which he does not know anything about.
Trial Examiner Batten: Read the question please, Mr. Reporter.
(The record was read.)

Trial Examiner Batten: Well, he has answered the question, he says, as much as he knows about it.

Q. (By Mr. Rissman.) Well, do you know that the Wisconsin Labor Relations Act says that it is unlawful for a union to be dominated by a company and for a union to get any support from a company and assistance, things of that sort, don't you?

A. Yes, sir.

Q. Getting back now, where were the meetings held after you were advised that they could not be held on company property?

A. They were held at the North Avenue Auditorium.

Q. That is in the city of Milwaukee?

A. Correct.

Q. Who owns that auditorium?

A. I couldn't tell you.

Q. It is not owned by the Falk Company?

A. I don't think so now.

Q. Your organization pays rent for it?

A. What is that?

Q. Your organization pays for the use of that auditorium?

A. Well,—

Q. Whenever you use it?

A. Well, I—

Q. (Continuing.) The Independent Union.

A. Correct.

Q. And you are the treasurer?

A. Yes, sir.

Q. Do you have anything to do with the payment of the hall rent?

A. No, I just sign the checks.

Trial Examiner Batten: I think that is a rather important part.

Mr. Lamfrom: You are on the right track anyway, go ahead.

Q. (By Mr. Rissman.) How long have you been meeting at the Auditorium? Or, tell me how many meetings have you held there?

A. I think we have had three there.

Q. How much is your rent per meeting, or do you rent by the month?

A. It was $20.

Q. $20 for each meeting?

A. For each meeting.

Q. At any of your meetings at the North Avenue Auditorium have any of the company executives been present?

Mr. Clark: You mean executives of The Falk Corporation, I take it?

Mr. Rissman: What other executives are we talking about?

Mr. Clark: Of course, one of the corporations is the Independent Union.

Q. (By Mr. Rissman.) Any officers of the Falk company, the respondent in this case.

957 A. No, sir.

Q. Was Mr. Hydar ever present at any of those meetings?

A. No, sir.

Q. Were any of the foremen ever present at any of those meetings?

A. I don't know, other than this fellow, whether he is a foreman.

Q. Who is he?

A. I have in mind Mr. Dearth.

Q. Dearth?

A. Yes, sir.

Q. What is Dearth's position in the factory?

A. Well,—

Mr. Engelhard: What is that name?

Mr. Rissman: Dearth, I think it is D-e-a-r-t-h.

Q. (By Mr. Rissman.) What kind of work does he do in the factory?

A. I don't know if he is classed as a foreman.

Q. Why is there any doubt in your mind as to whether he is a foreman?

A. Because he takes care of the night fellows down there, whether he is a foreman, I couldn't say.

Q. (By Trial Examiner Batten.) What does he do?

A. He is a fellow that is there at night.

Q. What does he do at night, give them orders?

958 A. I imagine so.

Q. (By Mr. Rissman.) Is he the boss at night, I mean generally speaking?

A. No, he isn't the boss.

Q. What does he do, order the fellows to listen to him, does he say anything to them at night?

A. Well, probably "get this casting, or get that casting."

Q. He supervises their work?

A. I think so.

Q. How many meetings has Dearth been to?
A. Just one.
Q. What was he doing there?
A. What was he doing there?
Q. Yes.
A. I don't know.
Q. Did he make any speeches?
A. No, sir.
Q. Was he talking to any of the fellows around there?
A. Not that I know of.
Q. Do you know who talked to him when he was there?
A. They elected him—he was there for one meeting.
Q. And he was elected?
A. And as we were electing the board of directors, some of these night fellows put him up on the ballot.
Q. The night men voted for Dearth?
959 A. Correct.
Q. Did he accept the nomination and election?
A. He accepted it.
Q. Is he now acting as a member of the board of directors?
A. No, sir.
Q. Why not?
A. Because at that time he thought he was no foreman.
Q. Who decided that he was, Mr. Adamski?
A. I couldn't tell you that.
Q. What brought about his resignation from his election to the board of directors?
A. I couldn't tell you.
Q. How many meetings—are you a member of the board of directors?
A. Yes, sir.
Q. How many meetings did Darth attend of the board of directors?
A. There was only one.
Q. Just when he was elected?
A. Elected.
Q. When was the next time you heard he was no longer on the board of directors?
A. I think the following day.
Q. From whom did you hear it?
A. From our president.
960 Q. Mr. Wilson?
A. Mr. Wilson.
Q. And what did Mr. Wilson say to you?

A. That he is out, he is a foreman, or classed as a foreman.

Q. And your officers—your organization wanted to be careful that it did not elect any foremen or anybody classed as foremen.

A. Right.

Q. What objection does your organization have, your Independent Union have to the election of men who are foremen or men classed as foremen?

A. I don't think they should be there, or as much as on the board of directors.

Q. But the members of the night crew did not feel that way when they elected Dearth on the board of directors?

A. Whether they elected him or he elected himself, I couldn't say.

Q. What do you mean, he elected himself?

A. These fellows couldn't write.

Q. You mean he marked the ballots?

A. Right.

Q. He marked his own name as a member of the board of directors?

A. So I presume.

961 Q. For the night men.

A. Right.

Q. Do you think these night men who worked under Dearth knew that he was voting for them?

A. I couldn't say.

Q. So he elected himself a member of the board of directors representing the night men?

Mr. Engelhard: Now just a moment. Are you testifying, Mr. Adamski, that is a fact, or that is just your opinion?

The Witness: The way I understood it, it was a fact.

Q. (By Mr. Engelhard.) Well, do you know whether or not it is a fact?

A. No, I don't think I would say it is a fact either.

Q. It is all hearsay to you, isn't it? Do you know what "hearsay" is?

Mr. Rissman: I suggest that Mr. Engelhard cross-examine him when his time comes. I resent this intrusion—

Mr. Engelhard: That is all right.

Mr. Lamfrom: It looks as though his time would never come.

Trial Examiner Batten: I think that you may proceed, Mr. Rissman.

Mr. Engelhard: Only sometimes a fellow gets a little bit excited and he would like to say something.

Mr. Rissman: Counsel in this case seem to have been 962 already—they always get excited.

Q. (By Mr. Rissman.) Do you know at that first meeting where Dearth elected himself a member of the board of directors as you testified, that Mr. Fealy was in the hall?

A. Fealy?

Q. Fealy, do you know him?

A. No, sir.

Q. You never heard of him?

A. Never heard of him.

Q. Do you know McAndrews?

A. No, sir.

Q. You don't know either one of those men?

A. Not by name, maybe by sight.

Q. Well, I don't know what they look like, so I cannot tell you.

Anyway, you do not know Fealy and McAndrews, so you can't tell us whether they were present at the meeting or whether they were not present, I mean if you don't know them by name.

A. I don't know them.

Q. As a member and officer of the Independent Union, have you asked any employees to join your union?

A. Yes.

Q. Have you done that during work hours?

A. Yes and no.

Q. Well, do you mean you have done it during work 963 hours and after work hours?

A. Right?

Mr. Rissman: Off the record now.

(Discussion outside the record.)

Q. (By Mr. Rissman.) Do you know if any of the other men solicited members in your union in the plant?

A. In our union?

Q. In your union.

A. I don't know.

Q. Did you ever see any of the other fellows going around with application cards to the men in the plant?

A. Yes.

Trial Examiner Batten: Who was that, who was that that made that statement?

Mr. Kirsch: I did.

Trial Examiner Batten: If you want to remain here, keep quiet.

Mr. Kirsch: If you want to send me home, send me home.

Trial Examiner Batten: If you want to remain here, you keep quiet.

Mr. Rissman: If the Examiner please, that man is here under subpoena by the board, but I will waive the right under the subpoena and suggest that the Examiner order him to leave the courtroom.

964 (Discussion outside the record, as previously ordered.)

Trial Examiner Batten: You may proceed, Mr. Rissman.

Q. (By Mr. Rissman.) Have you ever spoken with any foreman in the plant about your organization?

A. No, sir.

Q. Have you ever spoken—have they ever spoken to you about it?

A. No, sir.

Q. Have you ever heard any foremen express any opinions about your union?

A. No, sir.

Q. Have you ever had anybody tell you that such opinions have been expressed by foremen—any opinions have been expressed by foremen about your union?

A. I haven't heard them, no, sir.

Q. Do you know as an employee of the plant, who has worked there for many years, the attitude of the foremen toward your organization?

A. I don't know.

Q. Do you know if they favor it or oppose it?

A. I don't know.

Q. Do you know if they favor or oppose the C. I. O.?

A. I don't know.

Q. You have never heard any expression by the foremen on the C. I. O.?

965 A. No, sir.

Q. You have never heard them express any preference for your union?

A. No, sir.

Q. Have you ever spoken to any foremen or supervisors of the plant, superintendents or Mr. Falk, with reference to your organization, either in the plant or out of the plant?

A. What is that?

Trial Examiner Batten: Read the question please.

(The question was read.)

Mr. Engelhard: Now, I submit, Mr. Examiner, that is quite a comprehensive question, and either yes or no would probably not be the proper answer.

Trial Examiner Batten: It is quite comprehensive, although I think it is a question which can be easily understood, and that is, whether he has ever talked with anyone connected with the management in or out of the plant about the union.

Mr. Lamfrom: That is a different question, than counsel propounded.

Mr. Rissman: Then he may answer that question.

Q. (By Trial Examiner Batten.) Do you understand my question?

A. Yes, I understand you.

Q. What is your answer to that question?

966 A. No.

Q. (By Mr. Rissman.) Have you ever spoken to any employees outside the plant or inside the plant about your union or the C. I. O. union?

Mr. Engelhard: Again that is a double-barrel question now. Why not limit it to one organization at a time, so that we know what he means—

Trial Examiner Batten: Read the question please.

(The question was read.)

Mr. Engelhard: That is objected to, your Honor, as a double-barrel question.

Trial Examiner Batten: I think it covers a lot of ground, but to simplify the question, that is, whether you ever talked, whether you ever discussed the independent union or the C. I. O. union with your fellow employees in the plant or outside the plant.

The Witness: I have discussed both unions with fellow workers, sure.

Q. (By Mr. Rissman.) But you have been careful never to discuss any union with your foreman?

A. Right.

Q. Have the foremen ever spoken to you about soliciting memberships inside the plant?

A. No, sir.

Q. Has Mr. Green, the superintendent, ever spoken to

967 you about it?

A. No, sir.

Q. Do you know or were you ever advised that you were not to solicit memberships inside the plant?

A. Yes, sir.

Q. By whom were you advised?

A. Mr. Pritzloff.

Q. Who is he?

A. Superintendent in the foundry.

Q. What did he say?

A. He said "Cut out this application business", and that was the end of it.

Q. When did he say that to you, do you recall?

A. He said that away back when we were getting going.

Q. In the early days?

A. I couldn't recall the exact date.

Q. Shortly after your organization you mean?

A. Yes, I would say that.

Q. (By Trial Examiner Batten.) How many days had you been soliciting members in the plant before the superintendent told you to stop it?

A. I solicited during the noon hour and the next day we were told to cut it out.

Q. Did you ever solicit any members or hand out application cards during working hours?

968 A. I did.

Q. How many days did you do that during work hours before the superintendent told you to stop it?

A. Well, it was all cut out that first day.

Q. The first day?

A. Yes, sir.

Q. How many members did you solicit the first day during work hours?

A. I couldn't recall.

Q. Have you any idea?

A. No, sir.

Q. What type of machine do you operate?

A. Buffer.

Q. Well, when you solicited members, did you have to shut off your machine or leave your machine to solicit these members?

A. Yes, sir.

Q. How long a time that day did you shut down your machine?

A. Probably ten minutes and I would come back and do some more work.

Q. And then shut your machine down again?
A. Yes, sir.
Q. How many times that day did you shut your machine down and go away?
A. I don't remember that.
969 Q. (By Mr. Riseman.) How many members did you sign up that way altogether?
A. I have no idea.
Q. Were you met with refusal by some of the employees when you asked them to join your union?
A. All I did was to hand out the applications, that was the end.
Q. Did you ever say anything as you handed a man an application?
A. "Sign up if you wish".
Q. Did you ever say anything more than that?
A. No, sir.
Q. Did the men ever ask you any questions when you gave them the applications?
A. He would say what I thought of it and I would express my views.
Q. What was the opinion you expressed?
A. That I thought the Independent was the union for them.
Q. What reasons did you give them, if any?
A. They have got a job, they got a raise, bonuses. That was during the Works Council days.
Q. Is this union of yours a continuation of the Works Council?
A. No, sir.
Q. Then how could you claim credit for the advan-
970 tages gained by the Works Council?
A. You see, there are fellows working there that can't read and they can't write.
Q. Yes?
A. And they come to you for suggestions.
Q. Yes?
A. So, the best I could say, I can put to them I put, and whatever they want to do, they would do. I won't say all of the fellows are that way, but there are a few.
Q. But those fellows who are that way were guided about whatever you said was O.K.?
A. Yes, sir.
Q. You felt it was O.K. to have this Independent Union

because, as you stated to the men, they had received bonuses, wage increases, and they have a job, isn't that so?

A. Right.

Q. The bonuses, wage increase and job are all in the hands of The Falk Corporation, isn't that correct?

A. How do you mean?

Q. The Falk Corporation controls the jobs, wages and bonuses, does it not?

A. Right.

Q. And you felt that as long as the men were receiving these things from the company they should not do anything that might displease the company?

971 A. I wouldn't say that.

Q. Well, did you feel that it would displease the company if the men joined the C. I. O. in view of the fact that the company gave the men a job, had given them raises and had given them bonuses?

A. You mean as to joining the C. I. O.?

Q. Yes.

A. It was their privilege to do what they wanted to.

Q. (By Trial Examiner Batten.) The question is, do you think that the company—let me restate the question:

Do you know the attitude of The Falk Corporation with reference to unions?

A. No, sir.

Q. Do you know what their general reputation among the men is as to their view of the unions?

A. You mean the company union?

Q. The company, the management.

A. I don't know.

Q. Do you know what their views are with respect to the C. I. O.?

A. I don't know.

Q. Do you know anything about their views of unions?

A. No, sir.

Q. You never heard of their position with respect to unions?

972 A. No, sir.

Q. Do you know whether they are in favor of a closed shop?

A. I don't know.

Q. Do you know what a closed shop is?

A. Well, if my mind is right, I do.

Q. What is your idea of a closed shop?

A. You all have either to get into one organization, is that it?

Q. Well, I am asking you.

A. Well, that is my—

Q. (By Mr. Rissman.) Mr. Adamski, you have worked for the company 16 years.

A. Yes, sir.

Q. And you are grateful to the company for the job and bonuses and raises you have received, in that time.

A. Yes, sir.

Q. And you would not do anything knowingly that would displease the company, would you?

A. I don't know why not.

Q. Well, would you do anything that you thought Mr. Falk or the company superintendent didn't like, if what you were doing was in connection with your employment?

A. Sure not.

Q. And do you know whether or not the company favors or disfavors your Independent Union?

973 A. I don't know.

Q. Did it have any effect upon you—or would it have any effect upon you if you knew that the company did not favor the Independent Union?

Mr. Lamfrom: Effect with respect to what? It might make him sick, it might make him want to take a trip, effect with respect to what?

Mr. Rissman: With respect to his membership and activities then.

Trial Examiner Batten: What was the question?

(The question was read.)

Mr. Lamfrom: I submit that question—

Q. (By Trial Examiner Batten) Well, would it have any effect on your decision in joining the union whether the company was in favor of it or not?

A. I don't think so.

Q. (By Mr. Rissman.) Do you know Rudolph Oristo?

A. Rudolph Oristo?

Q. Yes.

A. Not by name, maybe by sight.

Q. Do you know whether or not any employee of the Falk Corporation prior to the enactment of the National Labor Relations law was ever discharged for his membership in a labor organization?

A. No, sir.

974 Q. Do you know, or did you ever hear Mr. Falk's statement before the Works Council was created, with reference to what he thought about the A. F. of L.?

A. No, sir.

Q. Were you present when Mr. Falk spoke to a group of machinists in 1933 in the plant, when Mr. Falk stood on the 16 foot boring mill and spoke to all of you about unions?

A. I recall the meeting.

Q. Do you recall Mr. Falk's speech at that meeting?

A. Not a thing.

Q. Do you recall he spoke?

A. I recall he was on the 16 foot mill.

Q. You don't remember anything he said?

A. Not a thing.

Q. You don't remember that at that time he said that the employees had ought to have a representation plan of their own and should not have an outside labor organizers?

A. I don't remember.

Q. You don't remember that?

A. I don't remember that.

Q. (By Trial Examiner Batten.) Are there several men working in your department who do not read or write?

A. Three I guess in my department.

Q. Do the men in the different departments elect their own director for the department? You are a director, 975 aren't you?

A. Yes, sir.

Q. And how were you elected director of the Independent association?

A. At the meeting of the North Avenue Auditorium.

Q. Were you elected by everybody that was present at the meeting or the men in your department?

A. Just the men that were present at the meeting.

Q. Whether they worked in your department or some other department.

A. Right.

Mr. Rissman: Just a few more questions.

Q. (By Mr. Rissman.) Mr. Adamski, do you recall a conversation you had with Mr. Richard Falk about April 1st, 1937, where he explained the Severson bill to you?

A. Yes, sir.

Q. Just tell us about that conversation.

A. Well, he called me to the office, and he said "Well"—

Q. Was it during work hours?

A. It was about 3:30.
Q. Was that during work hours?
A. It was during work hours.
Q. Go ahead.
A. About 3:30. "Well", he said, "it is the end of the Works Council. You fellows will have to see what you
976 can do about this yourselves. I don't care what union you fellows want to join, if you want to join any organization at all. You don't have to join any".
That was about all it amounted to.
Q. What did you say?
A. I said nothing, I just took in what he said to me, and the next morning I think it was I went to see Johnnie Breyer.
Q. Did Mr. Richard Falk at that time express any opinion about the A. F. of L. and the C. I. O.?
A. No, sir.
Q. Did he express any opinion about the Independent Union?
A. No, sir.
Q. Did he recommend that the employees ought to form an independent union of their own to take the place of the Works Council?
A. No, sir.
Q. Did you get any such ideas from the conversation you had with him?
A. No, sir.
Q. Did the company pay you for the time spent when you went to Mr. Burke's office with the committee?
A. Yes, sir.
Q. And then it was later deducted?
A. Correct.
Mr. Rissman: That is all.

977 *Examination by the Chair.*

Q. (By Trial Examiner Batten.) After you left Richard Falk's office, you said you went to see—the next morning—
A. The next morning this was.
Q. Who did you see then?
A. Johnnie Brever.
Q. Who is he?
A. He was our acting chairman of our Works Council at the time.
Q. Did you have a conversation with him?

A. Yes, sir.
Q. What did you tell him?
A. I told him, I said "Mr. Dick Falk said we could join any union we want to, so long as this Works Council is going to be disbanded."
Q. What did he say?
A. Well, he said he had an independent union, he was one that wanted an independent union.
Q. Did he tell you then you had better form an independent union?
A. No, we talked of that.
Q. Was an independent union already going?
A. It was not going then.
Q. It was not?
A. No.
978 Q. What did he say with respect to an independent union on that occasion when you told him about the talk you had with Mr. Richard Falk, what did he say?
A. You mean Brever?
Q. Yes.
A. Well, he says "We have got to get together now", he said, "have got to get this independent union going."
Q. Well, did he say anything about when they would have a meeting or what they would do about getting it going?
A. No, sir.
Q. Nothing was said?
A. No, all he said "Well, let's go and see Mr. Green".
Q. Did you go and see Mr. Green then?
A. Correct.
Q. Who went to see Mr. Green?
A. Brever, Wolf and myself.
Q. Where did you meet Mr. Green?
A. In the shop.
Q. During work hours?
A. This was early in the morning, yes.
Q. What did you say to Mr. Green?
A. Well, Brever was stating everything about this independent union.
Q. What did you say to Mr. Green?
A. So he says "Well, we have got to get all of the ex-
979 Works Council and see what they think of the Independent Union". That was his idea.
Q. He told Mr. Green that?
A. Correct.

Q. What did Mr. Green say?
A. Mr. Green says, no—
Q. What did Mr. Green say?
A. You can't get the men together.
Q. Was that before that meeting of April 12th?
A. Yes, sir.
Q. What did you do then when you left Mr. Green?
A. That was all that happened, we went back to work.
Q. Then when you received notice from the office boy to report to the meeting on April 12th, under the hospital, you knew then that you were violating Mr. Green's instructions about going to a meeting for that purpose, did you?
A. I didn't get no instructions from the office boy to come to that meeting.
Q. How did you learn about the meeting?
A. John Wolf notified me.
Q. Then when John Wolf notified you about the meeting for the purpose of forming this Independent Union, and you went to the meeting, did you think then of the fact that you were violating Mr. Green's instructions then?
A. I never thought of that.
980 Q. Now, when you went to the meeting of April 12th, you shut your machine off, did you?
A. Yes, sir.
Q. Who was your foreman?
A. Joe Dozey.
Q. Was he right there in your department?
A. Yes, sir.
Q. Did he see you shut your machine off?
A. I told him.
Q. You told him you were going to shut it off?
A. Yes, sir.
Q. Then you left and went to the meeting?
A. Yes.
Trial Examiner Batten: I think that is all.

Further Direct Examination.

Q. (By Mr. Rissman.) Did you ever have any conversation with Mr. Richard Falk after that one time when he explained the Severson Act to you?
A. You mean personal conversation?
Q. Yes, together with the committee.
A. I think there was one day, also the day after he had

me up there in the office, he had the whole Works Council together.

Q. What did he say to them together?

A. He told them all about this Severson bill, and I
981 think the Wagner Act was discussed on that date, or was it the day before?

Q. Did he tell you how to go about forming an independent union?

A. No, sir.

Q. Didn't he say at that time that it took only three men at a cost of $5 to get a charter?

A. No, sir.

Q. Weren't you present at that time?

A. No, sir.

Q. How?

A. No, sir.

Mr. Rissman: That is all.

Mr. Lamfrom: Present at what time? You asked if he was present at that time, what time do you have reference to?

Mr. Rissman: The meeting with Mr. Richard Falk.

Mr. Lamfrom: Now, which meeting with Richard Falk?

Mr. Rissman: The meeting he testified to.

Mr. Lamfrom: The one he testified to a moment ago?

Mr. Rissman: Yes.

Mr. Lamfrom: All right.

Q. (By Trial Examiner Batten.) What did Mr. Falk tell you at that meeting?

A. He explained the Severson Bill to us.

Q. Did he tell you what your rights were under the law?

982 A. Yes, sir.

Q. Did he tell you that you had the right to join any union you cared to?

A. We asked if we had the right to.

Q. What did he say in answer to that?

A. Yes.

Q. You asked him if you had the right to form an organization, your own union?

A. Sure.

Q. What did he say?

A. It was within the law.

Q. Was there any further discussion about an Independent Union or a national union?

A. No, sir, not that I recall.
Trial Examiner Batten: I think that is all.
Mr. Lamfrom: May we have the recess for lunch?
Trial Examiner Batten: Yes, I think so.
Mr. Rissman: I haven't any further questions of this witness.
Trial Examiner Batten: Well, I assume—
Mr. Lamfrom: I think we will want the witness back for some examination.
Trial Examiner Batten: You will return after lunch, at 2 o'clock.
The Witness: Yes, sir.
983 Mr. Lamson. Very well.
(Thereupon, at 12:35 o'clock P. M. a recess was taken until 2 o'clock P. M. of the same day.)
984 After Recess.
(Whereupon, the hearing was resumed pursuant to recess, at 2 o'clock P. M.)
Trial Examiner Batten: I believe we are ready to proceed, gentlemen.
Mr. Adamski, will you resume the stand please.

STANLEY JOSEPH ADAMSKI, a witness called by and on behalf of the National Labor Relations Board, being previously duly sworn, resumed the stand and further testified as follows:

Trial Examiner Batten: I notice that Mr. Clark, representing the Independent Union is not here, and that Mr. Goldberg, representing the Operating Engineers is not here, but in accordance with their agreement, we will proceed.
Mr. Lamfrom: I don't know whether Mr. Clark desires to cross examine this witness or Mr. Goldberg.
Mr. Rissman: Mr. Clark may because of the testimony relating to the Independent Union, practically all of it.
Trial Examiner Batten: Now, then, remembering their understanding with the Examiner, we will proceed.
Mr. Lamfrom: Are you through with him?
Mr. Rissman: Yes.
Mr. Lamfrom: Well, we are going to reserve cross examination until later.

Mr. Rissman: Well, is Mr. Adamski considered one of
985 your witnesses?

Mr. Lamfrom: Yes.

Mr. Rissman: The same as the foreman and others?

Mr. Lamfrom: Yes, he is considered one of our witnesses.

Mr. Rissman: All right, I don't know about these other men, but I have no further questions.

Trial Examiner Batten: The witness may be excused, and you wait here a few moments until they get here.

Mr. Rissman: Shall I go ahead with the next witness then?

Trial Examiner Batten: Yes.

(Witness excused.)

Mr. Rissman: Mr. Sagalino.

JOE SAGALINO, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) What is your name please?

A. I can't hear so far, you know.

Trial Examiner Batten: You can't hear so far away. When you answer, you talk loud, so that they can hear you.

Q. (By Mr. Rissman.) What is your name?

A. Joe Sagalino.

986 Mr. Lamfrom: Pardon me, Mr. Clark has just arrived.

Mr. Rissman: Off the record now.

(Discussion outside the record.)

Trial Examiner Batten: Do you desire to cross examine Mr. Adamski, Mr. Clark?

Mr. Clark: I think not at this time.

Trial Examiner Batten: You mean by that, you may want to later?

Mr. Clark: I thought in connection with his testimony on our side of the case.

Trial Examiner Batten: You intend to use him as your witness also?

Mr. Clark: I expect so. Does counsel for the company intend to use him as their witness also?

Mr. Lamfrom: Yes, we intend to cross examine him and use him as our witness also, in connection with matters relevant to our case.

Trial Examiner Batten: Now, I think this matter of waiving of cross examination or reserving cross examination has gotten to the point where the Trial Examiner will have to make some other arrangements, so from this time on any and all witnesses who are on the stand, if you care to cross examine them it should be done at the time, because if we are going to have it reserved by all four parties or five parties to this action, I don't know where we are going to
987 find ourselves at the end of the hearing.

So, from now on if there is going to be any cross examination of the witnesses you will do so please, at the time the witness is on the stand.

Now, that does not mean you may not call that witness as your own witness later on, but for the purposes of cross examination let's have it at the time.

Q. (By Mr. Rissman.) Where do you work, Mr. Sagallino?

A. The Falk Corporation.

Q. How long have you worked there?

A. 33 years.

Mr. Lamfrom: We can't understand.

Mr. Rissman: You had better come up here.

Trial Examiner Batten: Will you talk a little louder, please.

The Witness: 33 years.

Mr. Engelhard: How many?

The Witness: 33 years.

Mr. Engelhard: 33 years?

The Witness: Yes, sir.

Q. (By Mr. Rissman.) What kind of work do you do now?

A. Assistant foreman.

Q. In what department?

A. The shipping department.

Q. How long have you been an assistant foreman
988 there in the shipping department?

A. Since 1907.

Q. (By Mr. Engelhard.) Since 1907?

A. Since, yes.

Mr. Englehard: Yes.

Q. (By Mr. Rissman.) How many men have you got working under you?

A. Oh, I have got about 16 men, that is all.

Q. 16 men working on the day shift or night shift?

A. What?
Q. Day shift or night shift?
A. Yes, day shift.
Q. Do you ever talk to any of the men who work in your department about the C. I. O. union?
A. Never, I don't talk.
Q. Did you ever talk to any of the men in your department about the Independent Union?
A. Never.
Q. Did you ever talk to the men in your department about any kind of union?
A. No.
Q. Did they ever talk to you?
A. Nobody talked to me about union, not anybody.
Q. Then you don't—
A. No, all I say is, what you are doing, and I watch.
989 Q. You watch them but you don't say anything?
A. That is all.
Q. Did you ever talk to anybody about passing out application cards for the union?
A. No, I don't talk with anybody that makes application in the union.
Q. Did you ever see anybody making application for the union in the shop?
A. All I see, the men that work for the C. I. O., you know, but I don't know; I get it from my men, own men that work with me on the bench in my department, sign with the C. I. O. but I don't say nothing.
Q. Do you know, or were you ever told by the superintendent that the men that sign—that the men are not supposed to sign up?
A. Never, no, I don't talk with the superintendent at all.
Q. Did you go to the meeting at the Medford Hotel downtown?
A. Yes, sir.
Q. Did you hear the lawyer speak?
A. Yes, sir.
Q. Did you hear the lawyer tell the foremen not to say anything about unions?
A. While the lawyer talked, he don't say much, because I don't understand English, don't talk very well. I never go to American school, you know, but we all talked, but I
990 don't understand much what he said.
Q. Did Mr. Falk ever talk to you and tell you that if

you ever see anybody signing up for the union, or if you see anybody passing out application cards, you should stop that?

A. No, Mr. Falk don't say nothing about the Independent Union or the C. I. O. union, he don't say nothing at all.

Q. How about your superintendent?

A. I don't talk with him, he don't talk to me at all.

Q. Who is the foreman in your department?

A. In my department?

Q. Yes.

A. He is sick, you know.

Q. What is his name?

A. Charlie Ferley.

Q. You say he is sick now?

A. He is sick, yes.

Q. How long has he been absent from work?

A. About three months.

Q. You are taking his place while he is away?

A. Well, I take care of my department, you know.

Q. Do you know Walter Bartelmey?

A. No, I don't know him at all.

Q. He works in your department?

A. Works in my department?

Q. Bartelmey.

991 A. Bartelmey what?

Q. Bartelmey.

A. No, I don't know that kind of a name.

Mr. Engelhard: He may have a nickname.

Q. (By Mr. Rissman.) Did you ever talk to anybody who works in any other department about unions?

A. I don't talk to nobody about unions at all, you know. All I have ever was an argument with one man because the man was bothering my men all the time you know. I told his department that this man should stop it.

Q. You mean you had an argument with him?

A. Who?

Q. You and this man had an argument?

A. Yes, Mr. Casini.

Q. What department does he work in?

A. He worked on the floor.

Q. Who is his foreman?

A. His foreman is Walter Berry.

Q. What did this man do in your department that made you have an argument with him?

A. Well, I told his foreman not to let him do it, and he

argued with me, he called me names, you know—well, a little couple of words, and he got over everything, he was my friend again; we were always good friends again, and everything was O. K.

992 Q. What was he doing in your department?

A. Doing?

Q. Yes.

A. Bothering some of my men, you know. He never worked at all, you know, going around to sign for the C. I. O.

Q. And you had an argument with him about that?

A. Yes, sir.

Q. Did you ever say to one of the men in the next department to you "Why don't you join the Falk Union instead of the C. I. O."?

A. No, I never talk to nobody.

Q. You never said anything like that?

A. No, because I got to keep my business, you know; I don't talk to nobody to join the Independent Union.

Q. Did you ever tell anybody not to join the C. I. O.?

A. No.

Q. Never?

A. I don't talk to nobody.

Q. Do you know how many men in your department joined the C. I. O.?

A. Pretty near all, all I got today but two or three, and I don't say nothing to the men to sign the C. I. O., I keep my own business.

Q. You let them sign up?

A. Yes.

993 Q. You don't care if your men sign up for the C. I. O. or the Independent Union?

A. No.

Q. That is none of your business?

A. No.

Q. Do the men in your department wear their C. I. O. buttons?

A. Some that got them.

Q. How many buttons are there in your department, would you say?

A. Well, we have got about two or three men that have got buttons, and other men don't wear them no more, I don't know why.

Q. Did you ever ask them why they don't wear them?

A. No, I don't ask them at all.

Q. Did they ever tell you?
A. No.
Q. Did anybody ever tell you why the men don't wear their buttons?
A. How?
Q. Did anybody ever tell you why the men don't wear their buttons?
A. No, I don't know; that isn't my business, if they have got a button or not. I take care of my own work, my own business.
Q. Do you know if the men are afraid to wear their buttons?
994 A. How?
Q. Do you know if they are afraid to wear their buttons?
A. Nobody is afraid, I don't know if they are afraid or not, anybody that belongs to the C. I. O., I don't know if he is afraid or not.
Q. Nobody ever told you they were afraid?
A. No.
Q. And if you saw men with C. I. O. buttons on, you would not care about that?
A. No, sir.
Q. You would not tell them to take them off?
A. No.
Q. Now, Mr. Sagalino—
A. Yes, sir.
Q. —did you ever take any of the men from your department into the timekeeper's office to ask them to join the Independent Union?
A. In the timekeeper's office?
Q. Yes.
A. No, I never taken nobody in the office.
Q. Where did you take them?
A. I didn't take them, I don't know that I take them.
Q. Did you take anybody in the place?
A. I don't take anybody, I don't know anything about it.
Q. You don't know anything about it?
995 A. No, I don't take nobody for the C. I. O. or the Independent Union.
Q. Did you ever talk to any men or take any men to the timekeeper's office for any purpose?
A. Well, if they wanted to go in the timekeeper's office,

you know, they got a man, you know, if he want to sign in the C. I. O.

Q. Did you ask him what he wanted to sign?

A. I don't know what he wanted to sign, or not.

Q. Did you ask him what he wanted to sign?

A. I don't ask him to sign for nobody.

Q. Just tell us—

A. I don't know what he sign, I never saw it, I don't say anything; I keep my business because that is the law in the shop, anybody in the shop that has got any business.

Q. What were you telling us just now about taking men to the timekeeper's office? You said some of them went in there to sign?

A. A couple sign for the Independent Union.

Q. In the timekeeper's office?

A. I don't know if it was in the timekeeper's office, but a couple of men sign.

Q. You saw them sign?

A. How?

Q. You saw them sign?

996 A. I don't see them sign, but they go in there to sign.

Q. In the timekeeper's office?

A. Yes, sir.

Q. You say—

A. I don't say they went in the timekeeper's office, but I know I got two or three men, that all the rest of them belong to the C. I. O.

Q. Did you see these men go into the timekeeper's office?

A. I don't see them go in; I don't see where he signed. I keep my own business.

Q. How do you know that two or three men in your department joined the Independent Union?

A. Because they don't believe in the C. I. O.; I know some men in the Independent Union.

Q. How do you know that?

A. He told me himself.

Q. Did you ask him?

A. No, he talked, you know.

Q. That is what I mean, in the morning, after work or at dinner time?

A. Yes.

Q. You talk to the men?

A. Only about three men, that is all; the rest of them all belong to the C. I. O.

Q. Did you talk to them about the C. I. O.?

997 A. Me?

Q. Yes.

A. No, I don't, I don't talk about that.

Q. Did you talk to them about the Independent Union?

A. How?

Q. Did they tell you they were members of the Independent Union?

A. No.

Q. Did some of them tell you they were members of the C. I. O.?

A. Sure, men can belong to the C. I. O.

Q. You saw them—you saw some of them sign for the Independent Union?

A. He don't sign in there, in front of me. I was attending to my job; I work, he don't sign on the job; he signs away, I don't see at all. When the C. I. O. men sign, he don't show me at all.

Q. Now, these men that you talked to, that belong to the Independent Union, the two or three, did they tell you where they signed the cards?

A. No, they don't tell me.

Q. I don't—

A. No.

Q. Did you see anybody sign cards in the timekeeper's office?

A. No, I don't see.

998 Q. Did you ever see anybody go into the timekeeper's office?

A. I see two or three men, they go there in the timekeeper's office.

Q. You saw that?

A. Yes.

Q. At the time you had the argument with this one man who was bothering your employees, what did you tell him?

A. I don't tell him anything, I don't tell him nothing. He said to me, you told the foreman, and I says, "Yes."

Q. You did not threaten him?

A. We had a couple of words.

Q. What kind of couple of words did you have?

A. He says "You told the boss." I said "Yes." He said "Did you do it?" I said "Yes, I did it."

Mr. Rissman: He says that—

Mr. Engelhard: Just a moment. I don't know what he

said and I don't think you do either. Suppose you ask the question again.

I don't accuse you of trying to change it, but I don't think any of the five of us understood what he said. He talks so fast and so rapidly, that it is hard to get.

Q. (By Mr. Rissman.) You tell us very slowly so that this man can write it down.

A. You asked me a lot of questions—

999 Trial Examiner Batten: Just wait until he gets through asking the question, and maybe after you hear it, you can answer.

The Witness: All right.

Q. (By Mr. Rissman.) You tell us very slowly.

A. O. K.

Q. Just what that man said to you and what you said to him when you had the argument.

A. What I said to him?

Q. Yes, and tell us slowly.

Mr. Engelhard: The exact words if you remember.

The Witness: Well, the man, you know, he told the boss what I do because he bothered the men all day long, he goes to one place, you know, and I said to the foreman and the foreman tell him, he come to me, and he says "Did you tell Walter so and so?"

I says "Yes", and that was all.

Q. (By Mr. Rissman.) That was all you said?

A. That was all.

Q. When the men, the two or three men told you that they are members of the Independent Union, what do you say to them?

A. What do I say?

Q. Yes.

A. Nothing.

1000 Q. You just kept quiet?

A. Quiet, I was keeping my business, I take care of my business; I left every man, if he wants to go, to go.

Q. And when the men tell you that they belong to the C. I. O. what do you tell them?

A. Nothing.

Q. You keep quiet too?

A. Yes.

Mr. Rissman: That is all.

Mr. Engelhard: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have nothing.

Mr. Goldberg: No questions.
Trial Examiner Batten: All right. You are excused, then.
(Witness excused.)
Mr. Rissman: Mr. Greget.

LESLIE GREGET, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name please?
A. Leslie Greget.
Q. What is your first name?
1001 A. Leslie.
Q. You are employed by The Falk Corporation?
A. Yes, sir.
Q. How long have you been employed by the Falk Corporation?
A. 18 years.
Q. In what capacity are you now employed?
A. Machine division.
Q. What is your work?
A. Machinist.
Mr. Engelhard: Will you talk a little louder, Mr. Greget, so that we can hear you?
The Witness: I beg your pardon, if Mr. Rissman would stand back a little bit further, I would naturally talk louder.
Q. (By Mr. Rissman) Do you object to my standing so closely?
A. Yes, sir.
Q. And you a member of any labor organization?
A. Yes, sir.
Q. Which one?
A. The Independent.
Q. How long have you been a member?
A. Ever since it started.
Q. You were one of the organizers?
1002 A. Yes, sir.
Q. Were you a member of the former Works Council?
A. Yes, sir.
Q. What department do you represent?
A. Machine division.

Q. How long were you a representative on the Works Council, Mr. Greget?

A. Two years.

Q. Do you hold any office in the Independent Union?

A. No, sir.

Q. You are a member of any committee?

A. No.

Q. Were you present, Mr. Greget, at the last meeting of the Works Council on April 8th, 1937?

A. No.

Q. Were you present at the meeting of the employees of the corporation on April 12th, 1937?

A. I was.

Q. Were you working days at that time?

A. I was.

Q. How were you notified of that meeting?

A. I was notified by one of my fellow employees.

Q. By what kind of employee?

A. My fellow employees.

Q. What was that employee?

1003 A. John Brever.

Q. When did he notify you?

A. He notified me in the morning of the meeting.

Q. Before he notified you, did you know of any meeting that was to take place at that time?

A. I had talked to him several times before that about a meeting.

Q. When and where did you talk to him?

A. I have talked to him in the plant.

Q. Did you know when he spoke to you on the morning of April 12th the purpose of the meeting?

A. I don't remember.

Q. Did you know when he spoke to you before that meeting, when you spoke to him about such a meeting, the purpose of the meeting?

A. I had talked to him several times before that in regard to an Independent Union.

Q. And did you know when you came to the meeting on April 12th that was to be a meeting for the Independent Union?

A. I don't believe I knew exactly what the meeting was for.

Q. Did you have any conception of why you were going to a meeting on April 12th?

A. I surmised that, yes.
Q. You surmised what?
A. That was the purpose of it, the purpose of the 1004 meeting, for discussing an Independent Union.
Q. Had you ever discussed an independent union of any kind of union prior to April 12th, 1937 with anybody besides the man you just mentioned?
A. Yes, sir.
Q. With whom?
A. I discussed that back in 1933 when our Works Council was first organized.
Q. Between April 1st, 1937 and April 12th, 1937 did you ever discuss it with anybody?
A. Not with anyone outside of John Brever.
Q. Did you ever discuss it or hear it discussed by Mr. Falk, by Mr. Richard Falk or Mr. Harold Falk,—either one?
A. By either.
Q. You mean "by neither"?
A. By "neither", yes, sir.
Q. Did you ever discuss an independent union with any foremen between April 1st and April 12th?
A. I did not.
Q. Or since April 12th?
A. No, sir.
Q. On the day you were notified by this fellow employee to attend the meeting of April 12th, what arrangement, if any, did you make with your foreman to be absent from your work?
A. I told the foreman at the time that I was going to 1005 attend a meeting.
Q. Who was your foreman?
A. Mr. Senn.
Q. Did you tell him what kind of meeting?
A. I did not.
Q. Did he ask you?
A. No, sir.
Q. He permitted you to leave your work?
A. Yes, sir.
Q. Did you hear the testimony this morning of Mr. Adamski?
A. I did.
Q. All of it?
A. I did.

Q. Do you recall the statements of Mr. Harold Falk at this meeting of April 12th?

A. I do.

Q. Will you tell us what those statements were?

A. Well, he was asked in regard to that raise that was given to us May 1st instead of June 1st.

Q. Who asked him?

A. His name is William Stickman.

Q. What did William Stickman ask Mr. Falk?

A. As I remember, he said that the boys out there would be more satisfied if they were given that raise May 1st instead of June 1st for the shop. that they felt they had it
1006 coming, due to the cost of living going up so rapidly.

Q. Do you recall anything that was said by John Wilfer at that meeting?

A. I do not.

Q. Tell us who Mr. Stickman is.

A. Mr. Stickman is a welder in the foundry department.

Q. A former member of the Works Council?

A. Yes, sir.

Q. Is he now a member of the Independent Union?

A. I believe he is.

Q. Does he hold any office in the Independent Union?

A. I don't remember, I don't know.

Q. Don't you know?

A. I don't know for sure.

Q. What else did Mr. Falk say in addition to what he said about the raise?

A. Nothing that I can remember at the present time.

Q. Did you hear everything he said?

A. I did, I believe I did.

Q. Where were you sitting or standing when he was speaking; how far from him?

A. Oh, I would say a distance of about 20 feet.

Q. Did you have any difficulty in hearing him?

A. I did.

Q. Could your memory be refreshed as to what he said there?

1007 A. I don't think so, because it was a very noisy spot where we sat.

Q. But do you remember that Bill Stickman said something about advancing the raise from June to May because of the high cost of living.

A. Yes, sir.
1008 Q. You did not hear John Wilfer say anything?
A. No, sir.
Q. Did you see John Wilfer get up and say anything?
A. I don't remember.
Q. How long did Mr. Falk speak?
A. Oh, just a few minutes.
Q. Did Mr. Falk say anything about unions?
A. I don't remember.
Q. Did Mr. Falk say anything about the A. F. of L.?
A. I don't remember.
Q. Did he say anything about the C. I. O?
A. I don't remember.
Q. Did he say anything about the Independent Union?
A. I don't remember.
Q. When did you forget?
Mr. Lamfrom: What was that question?
(The question was read.)
Mr. Lamfrom: What was that?
Triel Examiner Batten: The reporter will read the question, please.
(The question was re-read.)
Mr. Lamfrom: I think that is a gratuitous insult, that no answer should be required. I don't believe that the witness should be compelled just because he seems to be speaking of innuendo, that he is forgetting.
1009 Trial Examiner Batten: Well—
Mr. Lamfrom: This is—
Trial Examiner Batten: The question may be stricken. You may ask the question more politely.
Q. (By Mr. Rissman.) Have you forgotten what was said by Mr. Falk aside from what you have already related to us?
A. Well you repeat that question, please.
Mr. Rissman: Read the question.
(The question was read.)
A. Yes, I have.
Q. (By Trial Examiner Batten.) Are you certain that he did say something else?
A. He probably did say something else, but I didn't hear it, I didn't understand it.
Q. (By Mr. Rissman.) Which was it, you didn't hear it or you didn't understand?
A. Well, I probably heard some remark, but I didn't understand.

Q. What was the remark you heard but didn't understand?

Mr. Engelhard: How can he testify to that, if he said he didn't hear it and couldn't understand it? He said it was a very noisy place, and he didn't understand.

Q. (By Trial Examiner Batten) Which was it, that you didn't understand what he said or you didn't hear what he said?

1010 A. I didn't hear. I will say that I didn't hear what he said.

Q. (By Mr. Rissman) What was finally done at the conclusion of that meeting, if you remember?

A. That was on the first day?

Q. The first day.

A. There was nothing done the first day.

Q. When were you appointed as a member of the committee to see Mr. Falk about getting an attorney for the Independent Union, was that the first day or the second day?

A. The second day.

Q. The second day?

A. Yes, sir.

Q. Tell us about the meeting on the second day, where it was held and who was present? That was the day following April 12th.

A. It was held at the same place the first one was held.

Q. Yes. How were you notified of that meeting?

A. I was notified by our chairman of the first meeting.

Q. Who was the chairman of the first meeting?

A. John Wolf.

Q. Did you excuse yourself from your foreman?

A. Yes, sir.

Q. Without any objection from him?

A. Yes, sir.

1011 Q. Did you tell the foreman where you were going?

A. I didn't tell him where I was going, because I attended other meetings there. I notified him quite often.

Q. Did he ask you where you were going?

A. He didn't ask me where I was going.

Q. Just what did you tell him when you asked permission to leave your work?

A. I told him I was to attend a meeting.

Q. By this time it was no longer a Works Council meeting, but a meeting of men who were creating an independent union, is that right?

A. That was the sole purpose of the meeting at that time.
Q. Who spoke at that second meeting?
A. Our chairman.
Q. Who?
A. Our chairman.
Q. Who is he?
A. John Wolf.
Q. Who was "our chairman"?
Trial Examiner Batten: John Wolf, he said.
Q. (By Mr. Rissman.) "Our chairman, John Wolf." hat did he say?
A. Well, we discussed matters regarding an independent ion.
Q. How to create it and all of that?
012 A. Yes, sir.
Q. Did any discussion came up as to the selection of attorney?
A. Yes, sir.
Q. Were the names of attorneys suggested?
A. Not at that meeting, no.
Q. Was a committee to see Mr. Falk appointed at this eeting, a committee to see him about an attorney?
A. There was a committee appointed by Mr. Wolf to get attorney?
Q. Who was the committee?
A. The committee was John Mitchka, Stanley Adamsky, nd myself.
Q. Whose suggestion was it of the members of that com- ittee to go to see Mr. Falk about an attorney?
A. I believe it was mine.
Q. Just how did that come about?
A. We left the meeting at that time.
Q. Yes.
A. And I believe it was outside somewhere we discussed he matter.
Q. When you say "we" you mean the three members of he committee?
A. Yes.
Q. Go ahead.
013 A. And we were somewhat, oh, as I would say, "up a tree", we didn't know which way to go or turn, it was omething new to us, and I believe I made the statement that e would see Mr. Falk and probably he could make some sug- estion as to what attorney we could get at the time.

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Q. Were there any attorneys' names mentioned in the meeting where you three men were appointed?

A. I don't remember.

Q. Did you hear the testimony of Mr. Adamsky wherein he stated that the name of Mr. Joseph Padway was suggested?

A. Yes.

Q. Does that refresh your memory as to that?

A. It does not.

Q. The three of you then went to Mr. Falk's office?

A. We did.

Q. Tell us what happened there?

Trial Examiner Batten: Now, you heard of course—what is his name?

Mr. Rissman: Adamsky.

Trial Examiner Batten: Mr. Adamsky testify this morning?

The Witness: I did.

Q. (By Trial Examiner Batten) As to what happened at Mr. Falk's office?

A. Yes, sir.

1014 Q. Is his statement of what happened there subtsantially correct?

A. Well, it is a little different from what I recollect.

Q. Tell us how you remember it.

A. We went to Mr. Falk's office and we told him our purpose in being there.

Q. What did you tell him?

A. And I believe it was I that asked him if he couldn't help us out on some information regarding an attorney, that we had decided to go ahead and form an independent union.

Q. (By Mr. Rissman) Are there any other differences between your recollection of what took place and what Mr. Adamsky testified to this morning?

Mr. Lamfrom: I suggest, if the Examiner please, that the witness be permitted to testify what he remembers occurred there.

Q. (By Trial Examiner Batten) Will you tell us what transpired there?

Mr. Lamfrom: Yes, what you said, and what Mr. Falk said and what the others said. Just tell us what happened there.

Mr. Rissman: That is right.

The Witness: After we asked him for the information he hesitated for a moment; he said, "Well, I dont—"

Q. (By Trial Examiner Batten) What do you mean
1015 "he hesitated"?

A. Well, he wanted to, it seemed to me like, and he didn't want to give us the information that we wanted at that time.

Q. (By Mr. Rissman) Did he say he didn't want to or he was hesitant about giving it?

A. Then after thinking for a few moments he said, "Oh, I don't think there is anything wrong, I don't see any harm in it", and he mentioned two names that I remember.

Q. What are those names?

A. He mentioned Mr. Fish and Mr. Burke. When he said Mr. Burke's name, I said, "It is O. K. with me."

Q. Why did you say that? Had you heard of Mr. Burke before?

A. Yes, I had heard of Mr. Burke before.

Q. In what connection had you heard of him?

A. I heard of Mr. Burke before through an automobile accident that I had previously.

Q. Were you involved in that accident in any way?

A. I was.

Q. I see. Mr. Burke was attorney in that case?

A. He was not an attorney, only. I heard it was him through—

Q. Well, how did you know—

Trial Examiner Batten: I don't know as that is material.

Mr. Rissman: Well, I think it is.

1016 Trial Examiner Batten. How is it?

Mr. Rissman: I think it is material, if that fact—

Trial Examiner Batten: You mean how he happened to hear of Mr. Burke through an automobile accident?

Mr. Rissman: In what connection he heard of Mr. Burke.

Trial Examiner Batten: Well, I understand he testified it was in connection with an automobile accident, wasn't it?

The Witness: Yes, sir.

Q. (By Mr. Rissman) Did you know Mr. Burke?

A. No, sir.

Q. You had never met him before?

A. No, sir.

Q. You had just heard his name, or heard something about his reputation?

A. I heard something about his reputation; I also read about Mr. Burke in the paper.

Q. What did you read about him in the paper?

A. Well, different cases that he had some time back.
Q. Do you recall any particular cases, the type of cases?
A. It seems to me that he represented the Ward Allen cases at the time.
Q. Represented who, do you know?
A. I couldn't say who.
Q. Did he represent a labor organization?
A. I couldn't say.
1017 Q. Or did he represent the company?
A. I just remember reading his name.
Q. Do you recall his name in connection with any other type of cases?
A. I don't recall right now, but I read of it several times.
Q. When Mr. Falk mentioned Mr. Burke's name, you just go ahead and tell us what else occurred at that meeting in Mr. Falk's office.
A. Well, Mr. Falk and I believe it was Mr. Connell that put the call through.
Q. Who is Mr. Connell?
A. Mr. Connell is vice president of The Falk Corporation.
Q. Well, we are talking now about what occurred in Mr. Falk's office.
A. That is what I am—
Q. Then Mr. Connell was present, too?
A. Yes, sir.
Q. All right, go ahead.
A. And Mr. Connell put a call through and Mr. Falk talked to Mr. Burke over the phone.
Q. What did he say? Did you hear Mr. Falk's part of the conversation?
A. I did.
Q. What did he say.
A. He said that some of the boys from his plant are
1018 in the office—wanted to organize an independent union, and he would like to make an appointment for us at his convenience.
Q. What else did Mr. Falk say to Mr. Burke over the telephone?
A. The appointment was made; that was all that was said.
Q. For what time was the appointment made?
A. Ten o'clock the following day.
Q. After Mr. Falk completed the telephone conversation was anything else said at that meeting?
A. No, sir.

Q. The committee of three then left?
A. We did.
Q. Before Mr. Falk mentioned the name of Mr. Burke and the other gentleman you mentioned—
Mr. Engelhard: Fish.
Mr. Rissman: Fish.
Mr. Engelhard: Col. Fish, or I mean Gen. Fish.
Q. (By Mr. Rissman) The other gentleman—we won't go into his titles—was there any discussion as to what kind of lawyer you wanted?
A. I don't remember.
Q. (By Trial Examiner Batten) You mean you don't remember or you don't know of any such discussion?
A. I don't remember whether we discussed that or not.
Q. Do you remember whether there were any matters
1019 discussed other than those you told us about?
A. There was nothing outside of that.
Q. (By Mr. Rissman) Now, when you and the other two committeemen were discussing among yourselves the problem of a lawyer before you decided to visit Mr. Falk's assistant, did any names of attorneys present themselves to you three men?
A. Not at that time.
Q. Not one of the three of you could think of the name of a lawyer in the city of Milwaukee?
A. Well, I knew of a lawyer that I had in my automobile accident, but I didn't want to suggest his name for the sole purpose of—I wouldn't have anyone else think for a minute that I was to get in on something, so I didn't suggest his name.
Q. But it was all right for Mr. Falk, the vice president of the corporation, to suggest the lawyer he knew, was it?
A. I think it was.
Q. It was improper for you, a member of the committee who was going to engage a lawyer, to suggest a name but not improper for the vice president of the company, who is in an adverse position to the union, to suggest the name of a lawyer?
Mr. Lamfrom: I submit that question is not based upon a proper foundation, and that that isn't what the witness testified.
1020 He said he knew some lawyer or had known one, and he didn't want to suggest him because he didn't want anybody to think he was in on it.

Now, that does not lead to the conclusion one way or the other as to whether he thought it was proper for Mr. Falk to suggest a lawyer and not proper for him, for reasons connected with apparently, as counsel has in mind, a question of nobody mixing in on account of—

Trial Examiner Batten: Of course, I think it is entirely immaterial whether this witness thinks it was proper or improper.

Mr. Lamfrom: Exactly.

Trial Examiner Batten: The Trial Examiner—if the facts show that Mr. Falk suggested a lawyer to the Independent Union, I think the Trial Examiner will be in a position to determine whether or not the circumstances of that suggestion of an attorney is in way way related to the issue in this case.

Mr. Lamfrom: That is the question.

Trial Examiner Batten: I mean if the fact is established that he did suggest a lawyer and that the union did engage that lawyer, I can draw the proper conclusions, if there are any, from those facts.

Mr. Rissman: The the further fact, if the Examiner please,
that the men who were in charge of creating this inde-
1021 pendent union were solicitous as to whether or not the
action and steps which they took in forming their union had the approval of the company.

Mr. Lamfrom: I don't think that follows.

Trial Examiner Batten: I don't think there is any evidence here of that. I am not so sure that even that is material to the issue in this case.

The material thing is, what action was taken by the corporation or its agents in furthering the purposes of the Independent Union; what things were done, what things were said. I think those are the material things to the issues.

I do not mean by my statement that I am excluding anything else.

Mr. Rissman: Naturally.

Q. (By Mr. Rissman) Following the selection of the attorney, and the necessary details of incorporating your union, your union had meetings at the North Avenue Auditorium?

A. We did.

Q. After holding the preliminary meetings on company property and on company time?

A. We did.

Q. Can you tell us how many meetings of your independent group were held on company premises and on company time?

A. I think there were meetings—

Q. And all the meetings since that time have been
1022 off of company property?

A. Yes.

Q. Directing your attention to the first meeting of your Independent Union at the North Avenue Auditorium were you present at that time?

A. I was.

Q. Do you recall when it was held?

A. The first meeting was held on a Sunday afternoon.

Q. April 18th, 1937?

A. About that time.

Mr. Engelhard: Now, just a moment, Mr. Rissman. Are you speaking of organization meetings or after the union was actually in existence?

Mr. Rissman: Probably both, I want to find out from the witness, I don't know.

Mr. Engelhard: Well, I know, but the witness probably can't distinguish between organization meetings and meetings held by the union itself after it was actually a union.

Mr. Rissman: Such a distinction is not necessary.

Trial Examiner Batten: I think he has testified there was a meeting held April 18th, is that right?

The Witness: Yes, sir.

Trial Examiner Batten: Of course, knowning there was a meeting I presume he can testify to what transpired in the meeting.

1023 Mr. Engelhard: Yes, but was that a union meeting in the sense that the union as an organization was meeting?

Trial Examiner Batten: We will find out when he tells us what happened.

Q. (By Mr. Rissman) What kind of meeting was that?

A. That meeting was for the sole purpose of getting members.

Q. It was after you had conferred with Mr. Burke at his office?

A. It was.

Q. And it was a meeting where the independent union, although not officially chartered, was in the process of organization?

A. Yes, sir.

Q. What part did you take in that meeting?

A. I took the floor for just a few minutes.

Q. What did you say?

A. I told them why we were there.
Q. Can you recall just exactly what you said?
A. Well, I told him that we were there to get members for our Independent Union, that was the purpose of being there that day.
Q. Were there any questions from the audience?
A. There was.
Q. Do you recall any of them?
A. I do.
1024 Q. Do you recall some of the questions directed to you?
A. I can.
Q. What were they?
A. Someone asked me from where we got our attorney?
Q. Do you know who asked that question?
A. I do not.
Q. Just one of the workers presumably?
A. Yes.
Q. Can you answer for the record?
A. Yes, sir.
Q. What was your answer to that question?
A. My answer to that question was, that I knew of Mr. Burke through an automobile accident that I had, and that was how we got in touch with Mr. Burke.
Q. Did you say anything about the fact that Mr. Falk had mentioned Mr. Burke's name to you?
A. No, sir.
Q. You concealed that from the audience?
Mr. Lamfrom: Now, I submit that is a conclusion. I think the witness may testify as to what he did and did not do, and the Examiner can draw his conclusions.
Q. (By Trial Examiner Batten) Why did you not advise the questioner that Mr. Falk had suggested Mr. Burke's name?
A. Well, I didn't even finish my statement at that time, there was such a wrangle and tangle there that I didn't
1025 even finish my statement.
Q. Your statement to the questioner that you had thought of Mr. Burke because of, or in connection with an automobile accident was untrue, was it not?
A. No.
Q. Well, you testified here that Mr. Burke's name was suggested by Mr. Falk. You never suggested his name to anybody, did you?
A. I did not.

Q. Then what was the question this man asked you, how did he ask you this question?

A. Well, I just exactly don't remember the question.

Q. Did you consider that your answer to him that you had suggested Mr. Burke because of an automobile accident, do you consider that to be true?

A. Well, I didn't finish my statement. I probably would have said—

Q. I don't care what you might have said, I am asking you was the statement you made true?

A. The statement I made was true, yes.

Q. (By Mr. Rissman) Don't you recall that when this member of the audience got up he said, "I have heard that Mr. Falk recommended the attorney for this organization, and I would like to know if that is true?"

Wasn't that the question that was put to you?

1026 A. I don't remember.

Q. Well, do you remember the question that was put to you?

A. Well, I answered the question the best I could.

Q. Do you remember the question?

A. Not exactly.

Q. Would you say that he did not ask it as I have indicated?

A. I don't remember the question exactly.

Q. Then why did you give us the question a while ago when I asked if any questions were put to you from the audience, you remembered it then, did you not?

A. Will you repeat that again?

Mr. Rissman: Will you read the question, please.

(The question was read.)

A. I remember the question put to me regarding, as to how we got the attorney.

Q. (By Mr. Rissman) And in that question wasn't there the statement that the information had been passed around that Mr. Falk suggested or recommended the attorney?

A. I don't know.

Q. Was there anything said in connection with that question about Mr. Falk or The Falk Corporation or the name Falk in any way whatsoever?

A. Not that I remember.

Q. Can you tell us now why in response to the question

1027 that you don't remember, you said that you knew of the attorney because of an automobile accident and you did

not say to them that the attorney was recommended by Mr. Harold Falk?

A. Well, I didn't mean by that, I didn't tell them that Mr. Falk recommended the attorney, I didn't mean anything by it. I just simply answered their question offhand as short as I could at the time.

Q. Can you tell us, as a man who has had experience in choosing attorneys and speaking to employees as a former representative of the Works Council, what effect it would have on the men at that meeting if you had told the truth that Mr. Harold Falk had recommended Mr. Burke as attorney?

Mr. Engelhard: That is objected to, your Honor. He is asking for a speculative answer.

Trial Examiner Batten: Well, I think the question is somewhat improper and rather difficult.

However, I think this witness had sufficient experience on the Works Council and in organization work, and so on, so that he at least ought to have some idea of what effect this might have had at the meeting and also the fact that he failed to mention this fact.

I think he may proceed with the answer to this question.

Mr. Engelhard: The further basis for the objection, if the Trial Examiner please, is this, that he several times while
1028 testifying here has tried to make it clear that there was quite a hub-bub in this audience and it was impossible for him to conclude the statement he was making at that time, several times he attempted to make that statement.

Trial Examiner Batten: Assuming it was impossible for him to finish, I think he can still answer this question as to what effect it might have on those in attendance in this meeting if he had advised them that Mr. Falk, the vice president of this corporation, had recommended the lawyer who was employed by the independent union.

Mr. Lamfrom: I think that question should have in it also, if you will permit the further fact, that the committee had asked Mr. Falk to suggest an attorney.

Trial Examiner Batten: Well, I have no objection to that.

Q. (By Mr. Lamfrom) Now, what effect, if I may put it this way, just as an illustration, what effect, if any, do you think your answer would have had upon the men there if you had, in addition to what you have stated—

Mr. Rissman: What, stated—

Mr. Lamfrom: Just a minute, you will have your turn.

Q. (By Mr. Lamfrom) —that in addition to what you

stated, you had stated that at the request of your committee Mr. Falk had suggested an attorney to you, and among the two names he suggested to you was Mr. Burke?

1029 Mr. Rissman: I object to counsel's intrusion in my direct examination. He can make such objection as he wishes and we will have a ruling upon it.

Trial Examiner Batten: Will you please read the question I asked?

(The record was read as follows:

"Assuming it was impossible for him to finish, I think he can still answer this question as to what effect it might have on those in attendance in this meeting if he had advised them that Mr. Falk, the vice president of this corporation, had recommended the lawyer who was employed by the independent union.

"Mr. Lamfrom: I think that question should have in it also, if you will permit the further fact, that the committee had asked Mr. Falk to suggest an attorney.

"Trial Examiner Batten: Well, I have no objection to that.")

Trial Examiner Batten: You may answer that question.

The Witness: I don't think it would have any effect.

Q. (By Mr. Rissman) Do you think it would have any effect on the members there if they knew that the union was not as independent as its name implies, but that it was dependent upon the company for, among other things, the selection of its attorney?

Mr. Lamfrom: That is objected to.

1030 Trial Examiner Batten: I will sustain the objection to that question.

As I have said frequently before, I think the Trial Examiner is in a position to judge what effect these various things may have and draw proper conclusions from them.

Q. (By Mr. Rissman) Don't you know as a matter of fact, that the reason you did not state at that meeting that Mr. Harold Falk recommended or suggested the attorney was because you felt that if the employees knew that they would not favor the Independent Union?

A. I never thought of it for one minute.

Q. Then why didn't you give a truthful statement in response to the question?

A. What question?

Q. The question put to you as to how the attorney was obtained.

A. Because it was so noisy up there at the time I didn't have a chance to finish my statement.

Q. It was quiet enough for you to say you knew the attorney through some experience you had, wasn't it?

A. Yes, and as soon as—

Q. Just a moment.

Mr. Lamfrom: Let him finish.

Q. (By Mr. Rissman) Go ahead.

A. Just as soon as I began talking, I didn't say but a few words, there was so much noise up there that I never
1031 even had a chance to finish my statement.

Q. When you went to tell them that Mr. Harold Falk had something to do with it, all of a sudden it became noisy?

A. I don't know whether I was going to tell them that or not.

Q. Did you have any intention of telling them that?

A. I don't know what was on my mind.

Q. Then you had no intention of telling them that Mr. Falk had anything to do with the selection of the attorney?

A. I probably did and probably didn't.

Q. Well, you did or you didn't?

A. I don't remember.

Q. (By Trial Examiner Batten) Well, if the matter wasn't on your mind at the time you couldn't have very well told him if it had been quiet, could you?

A. Well, I probably would be able to tell them if it was quiet; I don't remember what I had on my mind at this time.

Q. You testified that the matter wasn't even on your mind at the time.

Now, would you have told them something even had it not been on your mind, that wasn't on your mind?

A. I probably would have said more at the time, yes.

Q. (By Mr. Rissman) Mr. Gregert, after the selection of the attorney suggested by Mr. Falk did you have any conversation with any of the employees who were active in
1032 forming the Independent Union, as to what kind of answer would be made if anybody asked where the attorney came from and who recommended him?

A. No.

Q. Do you recall that in the meetings held on the subject after Mr. Burke was selected, it was discussed among you men that you would have to concoct some kind of a story to tell the employees if they became inquisitive as to where you got the attorney?

A. No.

Q. You recall at that time Mr. Harold Landrey, who was one of the employees engaged in that discussion, said, "You fellows can tell what you want to, but if anybody asks me I am going to tell them the truth"?

A. No, I don't.

Q. Would you say that didn't happen?

A. I would.

Q. You deny that it happened or you don't remember it happening?

A. I don't remember it.

Q. Did you ever discuss with anybody prior to the meeting at the North Avenue Auditorium what answer you would give to the question regarding the selection of the attorney?

A. No, I did not.

Q. Did you ever think about it?

1033 A. No, sir.

Q. Did anybody ever talk to you about it?

A. No, sir.

Q. Why did you feel it improper to tell the employees at the meeting at the North Avenue Auditorium that Mr. Harold Falk selected the attorney or suggested the attorney?

Mr. Engelhard: Now, he did not testify he felt there was anything improper and I object to putting words in the witness' mouth, your Honor, that he has not testified to.

Trial Examiner Batten: I will sustain the objection to that question.

Q. (By Mr. Rissman) Do you think it would have been improper to tell the employees that Mr. Harold Falk recommended the attorney?

A. I do not.

Q. Then why didn't you tell me?

Mr. Engelhard: I submit, your Honor, he has answered that question three or four times why he didn't tell them.

Mr. Lamfrom: Let him answer it again, if counsel would like to have repetition.

Trial Examiner Batten: You may answer the question.

The Witness: I did not tell them because that question was never put to me at any other time.

Trial Examiner Batten: What question?

The Witness: How we obtained the attorney.

1034 Q. (By Mr. Rissman) Or who recommended him and where he came from.

A. No, sir, that question was never put to me at any other time.

Q. I mean at that time, at the North Avenue Auditorium on April 18th.

A. Why, I didn't tell anyone about that?

Q. (By Trial Examiner Batten) The question is, why didn't you tell them at this meeting that Mr. Falk had recommended an attorney?

A. Well, as I stated before, it was noisy there, that I couldn't finish my statement at the time; I didn't say any more after that.

Mr. Rissman: I have no further questions of this witness.

Cross-Examination.

Q. (By Mr. Lamfrom) I suppose that when Mr. Harold Falk, you and the other members of the committee discussed this matter of an attorney—you remember that meeting—that Mr. Falk called you right up to him and whispered in your ear, "Now, if anything is ever said about the appointment or recommending of an attorney you must be sure to say to the boys that I did not recommend him to them."

Mr. Rissman: I object to the question. We are not interested in what Mr. Lamfrom supposes. If he will ask a 1035 question the witness may answer it.

Trial Examiner Batten: I presume that in view of the breadth of the matters we have covered heretofore some latitude will be permitted. However, I do feel that Mr. Lamfrom's question is a little bit—carrying it out a little bit.

Mr. Lamfrom: Well, I know what you have in mind, Mr. Trial Examiner, but I merely want to give counsel just a little bit of a concrete illustration of the upbuilding of suspicious circumstances out of nothing, of which he is so fond of doing.

Q. (By Mr. Lamfrom) Did Mr. Harold Falk—we will strike out the question.

Did Mr. Harold Falk at this interview you had with him, with the rest of the committee, requesting him to suggest as attorney, make any statement to you or any of the other members of the committee that you heard, that if anybody should ask them whether or not he suggested the attorney or how you come to get the attorney, that you should not say that he suggested the attorney to you?

A. No.

Q. Did anyone else at any time say to you, "If the boys inquire as to how you engaged the attorney, that you should not say that at your request Mr. Falk suggested the attorney to you"?

A. No.

1036 Q. (By Mr. Engelhard) Who first—

Mr. Rissman: Well, I am going to object to the double cross-examination.

Mr. Lamfrom: Well, there is some latitude. When one of the attorneys can't think of everything, he would like to have a little assistance.

Mr. Rissman: I will grant that.

Q. (By Mr. Engelhard) Who first conceived the idea among you men who were either members of the Works Council at the time this transpired or who were former members of the Works Council, about setting in motion the machinery for organizing an independent union? Who among all of those men do you give the credit for conceiving the idea?

A. There is only two that I would say.

Q. Who are they?

A. First of all, it was my idea when we first started the Works Council. At that time I spoke to the Works Council about it and they disagreed to it, for the purpose of the work being so slack at the time that the men didn't have sufficient money to pay their dues with, and at that time it was dropped. We probably spoke of it here and there, but nothing come of it at that time.

Q. Now, with reference to the month of April or the latter part of March or any time since the first of January, let's take the period of 1937, how did it happen that you men

1037 started talking about the formulation or rather, forming an independent union? What had happened that caused you men to think about organizing an independent union?

A. Well, I was very much in favor of organizing a group of our own, because I figured that we could have more favorable working conditions.

Q. (By Trial Examiner Batten) The question was, what happened to start this thing in motion?

A. I see, I beg your pardon.

Trial Examiner Batten: As I understand the question.

Mr. Engelhard: Yes, what happened.

Trial Examiner Batten: What occurred?

The Witness: I beg your pardon. I went to John Brever several times about six week before the union was organized, and talked it over with him and got his idea on it, and then just as soon as the company unions were outlawed I asked him if he wouldn't call a meeting. He being on the Works Council

at the time, I thought it would be a whole lot easier for him to do it than myself.

Q. (By Mr. Engelhard) Now, you say that just as soon as the company unions were outlawed, you have reference to the fact that sometime in March the Senate of the State of Wisconsin had passed what is known as the Severson Act and that subsequently the House passed it, and that on the 15th the Governor signed it, you knew that the Severson Act
1038 was to become a law in the State of Wisconsin?

A. I did.

Q. That was common knowledge everywhere?

A. I did.

Q. So you knew then that the Works Council would become an illegal organization under the Wisconsin law?

A. I did.

Q. During the time that the Severson Act was being discussed in the newspapers and among people generally outside, you and John Brever talked about organizing an independent union?

A. That—

Trial Examiner Batten: I don't think he said that at all, that he had this discussion at the time these other things were occurring in the paper.

Mr. Engelhard: I will ask him.

Trial Examiner Batten: He didn't say any such thing.

Mr. Engelhard: I will ask him.

Q. (By Mr. Engelhard) Were your discussions held with John Brever about organizing an independent union about the time, while these discussions were going on?

A. Yes.

Q. You were satisfied and so were other of your fellow employees, that that law was going through?

A. Yes, sir.

Q. Now, you discussed organizing an independent
1039 union with John Brever. Did you before the meeting of April 12th discuss it with other men and feel them out as to how they felt about it?

A. I did.

Q. Who were some of those other men?

A. Well, they were men that were working right near me here.

Q. Will you mention their names?

A. Harvey Walters.

Q. Harvey Walters?

A. And Leslie Charboulet.
Q. Any others?
A. There probably were others at the time but I just don't recollect.
Q. Did you discuss it with other members of the Works Council besides John Brever?
A. Not as the Works Council at the time, they were former members of the Works Council.
Q. You discussed it with several of the former members of the Works Council?
A. I did.
Q. You requested that John Brever call a meeting?
A. I did.
Q. Did he agree with you that such a meeting should be called?
A. He did.
1040 Q. Did you discuss calling a meeting with others besides John Brever, as to whether a meeting ought to be called?
A. I did.
Q. Who were some of those men?
A. They were former men from the Works Council and members of the Works Council at the present time.
Q. Name some of those men with whom you discussed calling another meeting?
A. I don't believe I got that question just right before that.
Q. I asked you whether or not besides discussing calling a meeting for the purpose of discussing among the men the formation of an independent union, you requested other men or rather asked other men whether or not they thought it would be a good idea to have a meeting?
A. Yes.
Q. Who were some of those men?
A One was John Wilfer.
Q. John who?
A. John Wilfer.
Q. Was he the man that was on the stand here this morning?
A. Yes, sir.
Q. Who else?
A. I don't remember.
Q. Now, did John Wilfer, Harvey Walters and this
1041 man you told us before, Leslie Charboulet, did they think it would be a good idea to have a meeting?

A. I talked with them about organizing an independent union.

Q. But not holding a meeting?

A. I did not.

Q. Now, when you talked to John Brever about calling a meeting did you and he determine on the date of the meeting?

A. No.

Mr. Rissman: If the Examiner please, I am going to object to the form of the examination.

The witness may state his conversations with these various persons, but I do object to the testimony being given by Mr. Engelhard, and the witness merely assenting to or denying the testimony.

Mr Engelhard: This is cross-examination and he is your witness.

Trial Examiner Batten: Read the question, please.

(The record was read.)

Trial Examiner Batten: I think that question was answered.

Mr. Rissman: Yes, but I object to the general lines of examination.

Trial Examiner Batten: You may proceed. If you have any objection to any particular question, Mr. Rissman, that is at least, if you will make your objection I will rule on it.

1042

Mr. Rissman: I will.

Mr. Engelhard: I thought yesterday it was agreed on cross-examination we would be allowed to ask leading questions.

Trial Examiner Batten: I am just saying if Mr. Rissman has objection to a particular question, if he will make it at the time I will rule upon it.

I believe we will recess for ten minutes.

(A short recess was taken.)

Mr. Lamfrom: Here, Mr. Clark, here is a copy of the answer to the intervening petition.

Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

The Examiner has received the answer of the respondent The Falk Corporation to the amended petition for intervention by the International Union of Operating Engineers, and I assume there is no objection to its being marked Respondent's Exhibit No. 4 and being received in evidence?

Mr Rissman: No objection.

Trial Examiner Batten: If there is no objection, it will be so received.

(Whereupon, the document above referred to was marked RESPONDENT'S EXHIBIT NO. 4 and received in evidence.

Mr. Engelhard: Will the reporter read back the last 1043 question.

(The record was read.)

Q. (By Mr. Engelhard) Did you talk about the advisability of having a meeting with John Wolf?

A. I did not.

Q. Or with Carl Menz?

A. I did not.

Q. Or with Trost?

A. No, sir.

Q. Or with Wilson?

A. No, sir.

Q. Now, when the meeting convened on the 12th of April, that took place where?

A. Below the hospital.

Q. What are the physical surroundings there?

A. The chemists' laboratory is upstairs.

Q. And what is downstairs?

A. Downstairs there is some machinery downstairs, off to one side.

Q. Does that machinery run?

A. It does.

Q. And did it run while you were having the meeting there?

A. Well, there was some of it stopped at the time, but there was still noise there from other machinery.

Q. What kind of machines are they?

1044 A. I couldn't say.

Q. Did they make—

A. A humming noise.

Q. A humming noise?

A. Yes, sir.

Q. How many men were there at that meeting? Well, I believe there were 23. What time did the meeting start?

A. It was early in the afternoon.

Q. What was the first thing that was done at that meeting after you arrived?

A. The first thing we did was elect our chairman?

Q. Who was that?

A. John Brever.
Q. Then what occurred?
A. Well, he opened the meeting by telling the boys why we had assembled there that day.
Q I didn't get that?
A. He opened the meeting by telling the boys why we were assembled there that day.
Q. What did he say?
A. That we were there for the purpose of organizing an independent union.
Q Was there any discussion after he made that announcement?
A. Yes, I believe there was.
Q. Who engaged in that discussion?
1045 A. Well, most everyone there had a few words to say at that time.
Q. Was it a formal meeting or was it conducted in a formal manner, if you know what I mean?
A. I know what you mean, but we didn't really get down to actual business; there was quite a bit of discussion at first, everybody seemed to be talking at one time.
Q. What was the nature of the talk that was going on?
A. Well, it was in regard to unions.
Q. What kind of unions?
A. Labor unions.
Q. Can you recall what discussions were had in regard to labor unions?
A. I could not.
Q. Was there any discussion there with reference to any of these men wishing to join the C. I. O.?
A. I don't remember.
Q. Or the A. F. of L.?
A I don't remember.
Q. The prime discussion was whether or not the men wanted to join an independent union?
A. Yes.
Q. During the course of the discussion did anyone from The Falk Corporation come in?
A. Someone was asked to come in at the time, I don't
1046 just remember who it was; I believe it was Mr. Dick Falk.
Mr. Rissman; Was this the first or the second meeting?
Mr. Engelhard: I am speaking of the meeting of April 12th.

The Witness: Oh, that was the first day?
Mr. Rissman: Yes.
The Witness: Well, I think Mr. Harold Falk was called in the first day.
Q. (By Mr. Engelhard) Do you know who from the company was at that first meetin?
A. Well, I believe Mr. Harold Falk was the only one.
Q. You believe that?
A. Yes, sir.
Q. Is it not a fact that Mr. Dick Falk was there?
A. Well, it seems to me like he was there the second day.
Q. You are not sure, are you?
A. I am not sure, no.
Q. Was Mr. Connell there?
A. He was there at one of the meetings.
Q. Do you know which one?
A. I don't remember.
Q. Do you know how either one of the three came to either one of these meetings?
A. They were asked there by our chairman.
Q. How do you know that?
1047 A. Well, he had the say on the floor.
Q. When he sent someone out for either one of these men, were you present?
A. I was.
Q. Do you know who was sent out?
A. I don't remember who was sent to get them.
Q. But you do know that someone was sent out for either of these three, to get either one of these to the meeting?
A. Yes, sir.
Q. Now, do you know at this time which of the three men were at the first meeting, except you are sure of one, that Mr. Harold Falk was at the first meeting?
A. Yes.
Q. Was that at the beginning or end of the meeting?
A. Well, I would say it was about the middle of the meeting.
Q. That is your best recollection?
A. Yes, sir.
Q. It may have been toward the close of the meeting so far as you know?
A. It may have.
Q. Now, as you stated, at that meeting did—at that meeting the discussion of organizing an independent union arose. Was Mr. Landrey there?

A. Yes.

Q. Did he engage in the discussion?

1048 A. He did.

Q. Now, there were 23 men. Did I understand you to say 17 of them chipped in money at the end of the meeting?

A. That was the second day.

Q. That was the second day?

A. Yes, sir.

Q. How many men were present at the second day's meeting?

A. There must have been 17, because I had $17 and everyone donated toward it.

Q. Was Mr. Landrey at that meeting the second day, the second meeting?

A. I don't remember who was absent.

Q. Well, do you know whether you got one dollar from him?

A. Well, if Mr. Landrey was there at the second meeting I got a dollar from him, yes.

Q. Now, I believe it was you that testified that the first meeting was on the 12th of April and the second meeting occurred on the 13th of April.

Was that in the morning or afternoon?

A. I believe it was in the afternoon.

Q. Was it understood at the conclusion of the meeting on the 12th that another meeting would take place the following day?

A. Yes.

Q. So you came together at the same place the fol-

1049 lowing day?

A. We did.

Q. And it was at that meeting that the three of you were chosen to hire a lawyer?

A. Yes, it was.

Q. Correct?

A. Yes, sir.

Q. Now then, when you, Mr. Adamsky and John Mitchka, were chosen for that purpose you went over to see Mr. Falk?

A. We did.

Q. You stated that you first had a discussion to determine what you would do?

A. We did.

Q. And you decided to go to see Mr. Falk?

A. Yes, sir.

Q. Now, I understand you testified that after you had told Mr. Falk that it was the purpose of you men to organize an independent union and that you came to him for the purpose of asking his advice about a lawyer, that he mentioned Col. Fish, or was it Gen. Fish, and Attorney Burke, and that you said, "Mr. Burke is O. K."?

A. Yes, sir.

Q. Did anyone there at that time request Mr. Falk to call up Mr. Burke?

A. Right after I said Mr. Burke was O. K. with me,
1050 then he immediately called, or Mr. Connell got Mr. Burke on the phone.

Q. You say Mr. Connell got Mr. Burke on the phone?

A. Yes.

Q. Did Mr. Falk talk to Mr. Burke?

A. Yes, sir.

Q. And he made an appointment for you at ten o'clock the next day?

A. Yes, sir.

Q. Did you request Mr. Falk to have an appointment made?

A. Yes, sir.

Q. Did anyone of you three request Mr. Falk or Mr. Connell to call up Mr. Burke?

A. No, sir.

Q. Now, the next day you said about nine or ten men were down to see Mr. Burke?

A. Ten men.

Q. And you were among them?

A. Yes, sir.

Q. Was Mr. Adamsky there?

A. Yes, sir.

Q. And Mr. John Mitchka?

A. Yes, sir.

Q. And Mr Landrey was there?

A. Yes, sir.

Q. And Mr. Kreger?

1051 A. Yes, sir.

Q. And who were some of the other men?

A. There was Harry Jones, John Wilfer—John Wilfer was not there.

There was Dan from shop 3, Dan Martin.

Did I mention Mr. Adamsky?

Q. I believe you did. How many of the men who were in

Mr. Burke's office the next day, being the 14th, that is correct, isn't it?

A. Yes, sir.

Q. April 14th.

A. Yes, sir.

Q. Are now to your knowledge officers and members in the C. I. O. local?

A I think there are three.

Q. Who are they?

A. Mr. Landrey, Mr. Kreger and it seems to me that there was one other that I just can't recall.

Q. But you know that Mr. Landrey is president of that local?

A. I heard so.

Q. And Mr. Kreger is what officer?

A. Vice president, I heard.

Q. And they were with you at that meeting in Mr. Burke's office?

1052 A. Yes, sir.

Q. Mr. Burke was hired that day, was he not?

A. Yes, sir.

Q. To represent the group?

A Yes, sir.

Q. At that time, of course, no union had been formed?

A. No, sir.

Q. What were the terms of hire agreed upon, if you remember?

A. We asked Mr. Burke as to just what fees, if he had any idea, he would charge us, and he said that if the Independent Union would function he would charge us a fee or if it didn't function he would not.

Q. Did anybody ask him as to about how much it would cost for him to get out the necessary organization papers?

Mr. Rissman: I fail to see the materiality of that question, if the Examiner please. Mr. Burke's fees should not be the subject of inquiry here.

Mr. Engelhard: Well, I think it is material.

Trial Examiner Batten: Mr. Clark is here representing Mr. Burke's office and certainly if he hasn't any objection, I guess the rest of us haven't.

Mr. Clark: I am willing if the fees are of interest, he should know.

Mr. Rissman: The question is the materiality, not whether or ont they are interesting.

1053 Trial Examiner Batten: Well, you went this morning into the question of arranging fees, and I have sufficient curiosity to want to know what the arrangement was.

Mr. Engelhard: I am not asking for the statement of a specific sum of money, understand; I am asking him as to what the agreement—as to what agreement was entered into betweeen these nine or ten men and Mr. Burke at that time.

What was the question I asked?

(The question was read.)

Q. (By Mr. Engelhard) And to perfect the organization as to meetings, the first meeting and things of that sort.

Will you answer that question?

A. Will you read that question again.

(The question was re-read.)

A. I don't remember that, I don't know.

Q. (By Mr. Engelhard) Was there anything said by Mr. Burke as to the rendition of a bill for services?

A. I don't remember.

Q. There was a general discussion between Mr. Burke—

A. Yes, sir.

Q. Was Mr. Clark there at the time?

A. Yes.

Q. — and the men who were there?

A. Yes.

Q. Now, when the men left what was the understand-
1054 ing as between Mr. Burke and you men as to what Mr. Burke was to do?

A. Mr. Burke was to get the by-laws in order for us.

Q. And articles of incorporation?

A. Yes, sir.

Q. Who was supposed to sign the articles of incorporation?

A. There was nothing said at that time as to the signing of papers.

Q. Nothing said at that time?

A. Not that day.

Q. Did you go back to Mr. Burke's office the next day?

A. I did.

Q. With whom?

A. With John Mitchka and Stanley Adamsky.

Q. Why did you three go back to Mr. Burke's office the following day?

A. I didn't know what was the purpose of going there until we were at his office. It was for the purpose of signing the incorporation papers.

Q. Well, you say you didn't know the purpose, were you asked to go there?

A. Yes, sir.

Q. Who asked you to go there?

A. Our chairman.

Q. That was who?

A. John Wolf.

1055 Q. John Wolf?

A. Yes, sir.

Q. And you went down there?

A. I did.

Q. To Mr. Burke's office?

A. I did.

Q. And what occurred when you got there?

A When we got there he give us each a copy of the by-laws and we read it over carefully.

Q. When you speak of by-laws, you mean the articles of incorporation, or do you mean the by-laws that the corporation subsequently adopted after it was organized?

Now, let's get that straight in our minds.

Are you sufficiently familiar with how a corporation is organized, at first the articles of incorporation are signed by three persons in this state; then they are filed in the Secretary of State's office, then a certified copy is filed in the Register of Deeds' office, and then subsequently the people who organize the corporation meet and officers and directors are elected and by-laws usually adopted.

Now, to keep that straight in our minds, let's see what occurred—

Mr. Rissman: If the Examiner please, I suggest that the by-laws and articles of incorporation be exhibited to the witness so that he may identify what document he did

1056 receive.

Mr. Engelhard: Have you got them?

Mr. Rissman: They have been subpoenaed from the Independent Union.

Mr. Engelhard: Now—

Mr. Rissman: Now, he may arrive at that difference—I mean this witness evidently does not know the difference between those various documents and it is important to know whether on the second day after the first consultation the attorney had the by-laws prepared or whether the witness is talking about the articles of incorporation.

Mr. Engelhard: It is clear to anybody who has any sense he is talking about the articles of incorporation.

Trial Examiner Batten: I think by examination of it, Mr. Engelhard, if you will ask the witness what he signed and have the witness describe it, we can decide what it was.

Mr. Engelhard: Well, he didn't sign anything.

Trial Examiner Batten: Well, if he describes the instrument which Mr. Burke gave him that day I think we can determine what it is probably.

Mr. Rissman: He has described it as the by-laws.

Mr. Engelhard: He has named it by-laws and described it as articles of incorporation.

Q. (By Mr. Engelhard) Now, after telling you how corporations are usually organized in this state, when you
1057 came down to Mr. Burke's office, the three of you, the three of you were asked to sign the articles of incorporation, isn't that correct?

A. Yes, sir.

Q. And not the by-laws?

Trial Examiner Batten: Now, what I am interested in is, what was this paper that Mr. Burke gave you to read? Will you describe that paper?

The Witness: That was the articles of incorporation, as I remember.

Q. (By Trial Examiner Batten) You are quite sure about it, now?

A. Yes, sir.

Q. (By Mr. Engelhard) Did that contain the name of the organization?

A. Yes, sir.

Q. And what was that name?

A. Independent Union of Falk Employees.

Q. Now, when was it decided the Independent Union name would be the Independent Union of Falk Employees?

A. That was decided on the first day, our first day with Mr. Burke.

Q. That was on the 13th—I mean, on the 14th?

A. Yes, sir.

Q. And that was decided among the nine men or ten
1058 men who were there?

A. Yes, sir.

Q. And Mr. Landrey and Mr. Kreger were there?

A. Yes, sir.

Q. Was there some discussion as to that among you men?

A. Yes, sir.

Q. So that when you walked out of the office on the 14th

Mr. Burke then knew that you wanted that organization called the Independent Union of Falk Employees?

A. Yes, sir.

Q. And that was agreeable to all nine men or ten men?

A. To all ten men, yes, sir.

Q. And it was indicated who—what kind of officers the union was supposed to have or this corporation was supposed to have?

A. Yes, sir.

Q. A president and vice president.

A. Yes, sir.

Q. And how many directors?

A. Yes, sir.

Q. And what the purpose of the organization would be?

A. Yes, sir.

Q. And what its powers were to be?

A. Yes, sir.

Q. Did you read the document?

1059 A. Yes, sir.

Q. Now, then, why didn't you sign it, the three of you, at that time?

Trial Examiner Batten: I don't think there is any evidence here they didn't.

Mr. Engelhard: He said they came down there that day and didn't sign the articles.

The Witness: I didn't sign because I thought it was the persons that had the responsibility; I did not know just what it really consisted of to sign incorporation papers.

Q. (By Mr. Engelhard) Did Mr. Adamsky and John Mitchka have the same reaction?

A. Well, they refused, I don't know just what they thought.

Q. Well, was that the last time that you attended any conference at Mr. Burke's office?

A. Yes, sir.

Q. Prior to the organization of the Independent Union?

A. Yes, sir.

Q. That was on the 15th then, is that correct, when you went down?

A. Yes, sir.

Q. The second time?

A. Yes, sir.

Q. Now, what arrangement did you make with Mr. Burke at that time as to who would sign the articles of incor-

1060 poration, if you did make any arrangements?

A. We left Mr. Burke that day with the impression that we were to run along as an association and later on incorporate.

Q. That is, did you tell him in effect that was what you thought it should be?

A. That was what we had decided to do when we left his office.

Q. Now then, did you have any application blanks printed for application for membership in the union?

A. Yes.

Q. Who paid for those?

A. Who paid for them?

Q. Yes.

A. I paid for the applications.

Q. Were those application blanks used partially for obtaining members?

A. Yes.

Q. In the union?

A. Yes.

Q. Now, between the 15th of April and the 18th the organization of the union had not been perfected?

A. It had not.

Q. You and some of the other men were active in trying to get the organization on its feet?

A. Yes, sir.

1061 Q. Now, then, a meeting was called of employees of the Falk Corporation for Sunday, April 18th?

A. Yes, sir.

Q. And who called that meeting?

A. I don't just recall who did that call that meeting.

Q. Well, did you have anything to do in deciding on the meeting on the 18th at the North Avenue Auditorium?

A. I think that was done the day we refused to sign the incorporation papers.

Q. That is, you, Mr. Adamsky and Mr. Mitchka would have to decide as to whether or not a meeting was to be called?

A. We did.

Q. And you were appointed on the committee to get a lawyer?

A. Yes, sir.

Q. Then did you have other duties to perform besides getting a lawyer?

A. No.

Q. Why did you undertake to call or arrange for a meeting on the 18th?

A. Well, because we wanted to get the Independent Union started as soon as we could.

Q. How were the employees of the Falk Corporation notified that a meeting was to take place on the 18th?

A. They were notified by a printed statement.

Q. Who got out that printed statement?

1062 A. Mr. Burke, Mr. Adamsky, Mr. Mitchka and myself.

Q. That is, you had dictated it in Mr. Burke's office?

A. Yes, sir.

Q. Then did you have it printed?

A. Yes, sir.

Q. Who employed the printer?

A. A man working in the front office by the name of Brice.

Q. Who paid for the printing?

A. I did myself.

Q. Now then, on the 18th the men gathered at that North Avenue Auditorium at about what time?

A. I believe it was two o'clock.

Q. And there was a meeting held there?

A. Yes.

Q. And that meeting was addressed by Mr. Burke?

A. Mr. Burke did not open that meeting.

Q. I did not say he opened it; I said it was addressed by Mr. Burke.

A. Well, he was there, yes.

Q. Did anything come of that meeting? Was there anything decided at that meeting?

A. Not a thing.

Q. Was there any decision made at that meeting that the Independent Union was to be organized or not?

A. We did decide at that time to run along as an 1063 association and then later on incorporate.

Q. You mean at that meeting on the 18th?

A. Yes, sir.

Q. That was the decision?

A. Yes, sir.

Q. Now, do you know what happened on the morning of the 19th insofar as the articles of incorporation were concerned?

A. Yes, I do.

Q. What happened?

A. There were three men from the Falk plant that were to sign the incorporation papers.

Q. One was Mr. Wilson sitting here?
A. Yes, sir.
Q. And Mr. Trost?
A. Yes, sir.
Q. And Mr. Menz?
A. Yes, sir.
Q. You know that, of course, as a member of the association, that the articles of incorporation were filed at Madison on the 19th?
A. I knew it.
Q. And you knew that a certified copy was recorded in the Office of the Register of Deeds on the 20th?
A. I knew it.

Trial Examiner Batten: Mr. Engelhard, I was wondering if you will ask the witness why the three men who originally went up to Mr. Burke's office didn't sign and who decided the three men that did sign would sign instead.

Mr. Engelhard: I was just going to get into that.

Mr. Lamfrom: We have a little document here which Mr. Rissman kindly handed me, which shows the notice that was sent out, which will give the Examiner an opinion of what the various events were, and will show what the notice was.

Is there any objection to that?

Mr. Engelhard: Will you mark that Respondent's Exhibit 5?

(Whereupon, the document above referred to was marked Respondent's Exhibit No. 5 for identification.)

Trial Examiner Batten: As a matter of fact, if Mr. Clark has the charter here and by-laws it would be a good place to introduce them.

Mr. Engelhard: I think I will do that.

Trial Examiner Batten: The witness just testified they were filed.

Mr. Engelhard: Not the by-laws.

Trial Examiner Batten: I mean the charter, this would be a good place to put it in.

Mr. Lamfrom: Let it appear that Mr. Rissman just handed me the notice which is marked Respondent's Exhibit—what?

Mr. Engelhard: 5.

Mr. Rissman: Pardon me, the charter and by-laws and other documents of the Independent Union have been subpoenaed by the Board but not yet produced.

Mr. Lamfrom: Let it appear that you did not subpoena the respondent to produce them.

Mr. Rissman: No.

Mr. Lamfrom: The respondent can't produce them, as I told you before.

Trial Examiner Batten: Are you sure about that?

Mr. Lamfrom: I am positive of it. This is the first time I have ever seen this notice.

Q. (By Mr. Engelhard.) Now, Mr. Greget, I will show you Respondent's Exhibit No. 5, and ask you whether or not this is the notice that was sent out among the employees of the plant for the meeting of April 18, 1937?

A. Yes, sir.

1066 Q. And that states the meeting was to take place at one thirty, at 3116 West North Avenue?

A. Yes, sir.

Q. And it says:

"A meeting of the employees, not including superintendents, assistant superintendents, foremen or assistant foremen, of The Falk Corporation will be held on Sunday afternoon, April 18th, 1937, at 1:30 o'clock at 3116 West North Avenue, Milwaukee, Wisconsin, to consider the question of organizing for the purpose of collective bargaining.

"Bring employee's pass.

"All employees are invited to attend.

"At the request of the Committee."

Trial Examiner Batten: May I see it?

Mr. Engelhard: Yes.

Trial Examiner Batten: You don't need to put this in the record.

(Discussion outside the record.)

Q. (By Mr. Engelhard.) Now, Mr. Greget, do you know how it happened that between the time of that meeting of the 18th and the filing of these articles of incorporation at Madison on the 19th, Messrs. Wilson, Menz and Schultz went to Mr. Burke's office and signed up those articles of incorporation?

A. I do.

1067 Q. Will you tell us what you know about that?

Mr. Rissman: And how he knows.

Q. (By Mr. Engelhard.) Yes, and how you know it?

A. It was after the meeting at the North Avenue Auditorium that Sunday—I forget the date—that I was talking to Mr. Burke and to Mr. Trost and we were discussing about

who was to sign these incorporation papers as we went along, and just then Mr. Wilson came along and he said—he listened for a moment—he said "Why, if you are looking for someone to sign the papers" he says, "I will sign if I can get some one to sign with me," and Joe Trost and I both volunteered we would sign those papers with him.

Then Joe Trost or the attorney mentioned probably we had better get someone from a different department, it would probably look a little better, because Joe Trost and I worked in the same department.

I said "If it is O. K. with you, it is all right with me." And how Mr. Menz got into the picture, I don't know.

Q. Now, you said that you had—

Trial Examiner Batten: Mr. Engelhard, may I interrupt there?

Mr. Engelhard: Yes, sir.

Trial Examiner Batten: Mr. Clark, have you the charter?

Mr. Clark: Yes.

Trial Examiner Batten: May we have it introduced
1068 at this time please? I think this has been under discussion, and I think this would be a good place.

Mr. Lamfrom: To whom is the subpoena directed to produce the charter?

Mr. Rissman: To the Independent Union, to the attention of the president, Mr. Wilson.

Trial Examiner Batten: Well, of course I want it to appear clearly that the respondent is not introducing the charter; I mean it is at the request of the Examiner, Mr. Lamfrom.

Mr. Lamfrom: Yes, surely, I want to have it appear clearly that we were not subpoenaed to produce the charter over which we had no control, custody or possession, influence and a lot of other things.

Mr. Rissman: I never saw it.

Trial Examiner Batten: I think it so shows.

Mr. Lamfrom: It should by this time.

Mr. Rissman: Now, with reference—

Trial Examiner Batten: Now, are you going to introduce it?

Mr. Rissman: If you feel it is advisable to have it introduced at this time, it is all right.

Trial Examiner Batten: I think this would be a good time to have it introduced, irrespective of who is introducing it, because it has been under discussion.

1069 Mr. Rissman: If everybody disclaims it, I will introduce it as my exhibit.

Mr. Lamfrom: Nobody that I know is disclaiming anything.

Mr. Clark: Mr. Rissman made the statement that it has not been produced. No one asked for it. I have been here since the beginning of the week and we have the original articles and we have a copy.

I take it, if you want the original marked, then leave a copy—

Mr. Rissman: You probably want the original.

Mr. Clark: Yes.

Trial Examiner Batten: I would say you introduce the original with the privilege of substituting a copy therefor.

Mr. Engelhard: You mean introduce the original charter and substitute a copy.

Trial Examiner Batten: Yes.

Mr. Clark: You had better mark it.

(Thereupon the document above referred to was marked Board's Exhibit No. 26 for identification.)

Trial Examiner Batten: Well, I requested that it be introduced at this time. I think possibly it would be advisable that it be made Board's Exhibit 26.

Mr. Clark: Pursuant to the subpoena directed to Mr. Wilson, president of the Independent Union, to furnish
1070 the articles of incorporation, we are now producing them at the request of the Examiner, they have been marked Board's Exhibit No. 26 and I should like to ask leave at this time to withdraw the original and substitute a copy in its stead.

Trial Examiner Batten: If there is no objection, the copy will be received.

Mr. Rissman: As long as the copy is a true copy of the original I have no objection.

Mr. Clark: Mr. Examiner—

Trial Examiner Batten: Mr. Clark, you made the copy, I mean it was made under your supervision?

Mr. Clark: Yes, I know it is a copy of the original.

Trial Examiner Batten: You know it is a correct copy?

Mr. Clark: Yes.

Trial Examiner Batten: You may withdraw the original and substitute the copy.

(Thereupon the document above referred to, heretofore marked for identification as BOARD'S EXHIBIT NO. 26, was received in evidence.)

Mr. Clark: I would like to make this statement: On the

back of the original there is stamped "Registrar's Office, Milwaukee County, Wisconsin. Received for record April 20th, 1937, at 12:25 P. M., recorded in Volume 89 of Corporations, page 250.

"Stanley Schultz, Registrar of Deeds, by John Zim-
1071 merman, Deputy."

Trial Examiner Batten: That does not appear on the copy?

Mr. Clark: That does not appear on the copy.

Trial Examiner Batten: You may withdraw the original.

Mr. Engelhard: Let's understand, Mr. Clark, that attached to the original is the certificate of the Secretary of State, Theodore Dammann, to the effect that the Secretary of State certifies that the original articles of incorporation of the organization of Independent Union of Falk Employees, of which articles attached is a certified copy, was on the 19th day of April, A. D. 1937 accepted and filed in the Department of State, and that certificate is dated the 19th day of April, 1937.

Trial Examiner Batten: That does not appear on the copy?

Mr. Engelhard: No, that is the certificate which the Secretary of State attaches to the original.

Trial Examiner Batten: My understanding was when I permitted the copy to be substituted, that it was a complete copy of the entire Exhibit 26. So it is now understood that it is a copy of the articles—

Mr. Engelhard: Merely of the articles.

Trial Examiner Batten: —and the certificate of the proper state official and stamp of filing by the local officer is not a part of the copy which has been substituted.

1072 Mr. Engelhard: That is correct. I will ask the reporter to indicate on the original the exhibit number, so that the exhibit itself includes a number.

Mr. Clark: You read into the record the information on the certificate and the information contained on the back.

Mr. Engelhard: That was the purpose in reading it.

Trial Examiner Batten: There being no objection it will be received.

Mr. Engelhard: Now will the reporter read the last question and answer?

(The record was read as follows:

"Q. Now, Mr. Greget, do you know how it happened that between the time of that meeting of the 18th and the filing of these articles of incorporation at Madison on the 19th, Messrs.

Wilson, Menz and Schultz went to Mr. Burke's office and signed up those articles of incorporation?

"A. I do.

"Q. Will you tell us what you know about that?

"Mr. Rissman: And how he knows.

"Q. (By Mr. Engelhard.) Yes, and how you know it?

"A. It was after the meeting at the North Avenue Auditorium that Sunday—I forget the date—that I was talking to Mr. Burke and to Mr. Trost and we were discussing about who was to sign these incorporation papers as we were
1073 along, and just then Mr. Wilson came along and he said —he listened for a moment—and he said "Why, if you are looking for someone to sign the papers", he says, "I will sign if I ran get someone to sign with me", and Joe Trost and I both volunteered we would sign those papers with him.

"Then Joe Trost or the attorney mentioned probably we had better get someone from a different department, it would probably look a little better, because Joe Trost and I worked in the same department.

"I said 'If it is O. K. with you, it is all right with me.' And how Mr. Menz got into the picture I don't know.")

Q. (By Mr. Engelhard.) Now, did you have any meeting—strike that.

Did you know that an organization meeting took place on the 26th day—that is wrong—on the 24th day of April, on Saturday?

A. Yes.

Q. Were you present at that meeting?

A. Yes.

Q. That was a meeting at which the stockholders or members, this being a non-profit organization, elected a board of directors?

A. Yes.

1074 Q. And it was the meeting at which the officers were —no, pardon me.

Then subsequently, if you know this, the board of directors met and elected officers, is that correct?

A. Yes.

Q. Now,—

Trial Examiner Batten: Mr. Engelhard, I wonder if you will ask him who are the stockholders in this corporation.

Mr. Lamfrom: They are not stockholders, they are members.

Trial Examiner Batten: I mean who are the members, he

referred to this meeting, who was there, who do you mean by "members"?

The Witness: The members that had signed—any employees who had signed applications to become members of the Independent Union.

Q. (By Mr. Engelhard.) Do you know how many employees had signed applications up to that time?

A. No, not up to that Sunday.

Q. I am not speaking of Sunday, I am speaking of Saturday.

A. Oh, Saturday, that was the second meeting.

Q. Just about the first and second meetings. I am speaking of the meeting on Saturday, the 24th.

A. That was the day after the board of directors were set up.

Q. You were at that meeting?

1075 A. I was there. I don't remember the exact amount of applications.

Q. Thirteen directors were elected at that meeting?

A. Well,—

Mr. Rissman: I object to the question. Mr. Engelhard is again testifying rather than asking the witness a question.

Mr. Engelhard: Well, I think that is a matter about which we can have any dispute, Mr. Rissman.

Mr. Rissman: But we may have some dispute as to whether or not the witness remembers this thing. In my examination he remembered very few things, and in your testimony, you are testifying for him, and he has no difficulty at all.

I suggest therefore, that he be asked questions rather than statements.

Trial Examiner Batten: I do think, Mr. Engelhard, if you were to ask him how many directors were elected, it would be better form than to say 13 were elected, because as I recall, this witness did have some difficulty in remembering very much on his direct examination; so I think probably if you would permit him to indicate what he can, and then if you—if there is something further you may refresh his memory by a more direct question.

Mr. Engelhard: These questions, Mr. Examiner, are briefly a chronological development of what occurred and

1076 naturally this man will remember more when taking them over chronologically than when skipping around without giving any definite basis.

Trial Examiner Batten: I don't think you may skip around,

you may continue your chronological questions but ask questions which will permit the witness to answer whether he recalls how many directors were elected, or whether he recalls what was done.

Q. (By Mr. Engelhard.) Well, Mr. Greget, how many directors were elected at that meeting?

A. I don't know.

Q. Then you don't know how many directors the corporation has, I mean the Independent Union.

A. I couldn't say exactly.

Q. The by-laws were adopted at that meeting?

A. Yes, sir.

Q. Now, about how many people attended that meeting, if you know?

A. Well,—

Q. (Continuing.) At which the directors were elected.

A. I have no count of that meeting at all.

Q. Well, were there five people there, or were there five hundred there?

A. Oh, I would say there were several hundred.

Q. (By Mr. Rissman.) Does that mean two hundred 1077 or three hundred?

A. I would say from two to three hundred people.

Q. (By Mr. Engelhard.) Now, after the meeting of the 26th—I mean of the 24th of April, at which the corporation was organized, the corporate organization was perfected, had there been any other meetings of members of the Independent Union?

A. Yes, there has been a meeting once a month ever since.

Q. Do you know what the by-laws call for as to meetings by members of the corporation?

A. I do not, there is only one copy of the by-laws.

Q. What is that?

A. There is only one copy of the by-laws.

Q. Then you are not familiar with the by-laws.

A. No.

Q. But you have a meeting once a month.

A. The union meets once a month, yes.

Q. Yes.

Trial Examiner Batten: Mr. Engelhard, have you any objection if they have those by-laws introduced at this time?

Mr. Engelhard: I personally haven't any.

Mr. Rissman: Those are also subject to subpoena; I have no objection.

Trial Examiner Batten: I wonder if you will produce the by-laws at this time. As long as you are carrying this witness along on the chronological order of this, I think
1078 this would be a good place to put them in.

Mr. Engelhard: I have no objection to having the by-laws.

Mr. Lamfrom: Who has them?

Mr. Rissman: Mr. Clark has them.

Mr. Lamfrom: All right.

Trial Examiner Batten: That will be Board's Exhibit No. 27?

Mr. Rissman: 27, yes.

Trial Examiner Batten: Do you have a copy of those, Mr. Clark?

Mr. Clark: I have, but I would prefer to have another copy made to substitute in place of this yellow copy.

Mr. Rissman: Perhaps we had better wait until Mr. Clark can bring in another copy.

Trial Examiner Batten: Well, you introduce them now and then I will permit you to take this copy and make another copy, so that we have them in at this point.

I am thinking of any person in the future who has to go through the transcript, if these things are in at this point.

That will be Board's Exhibit No. 27,—consisting of how many pages, Mr. Clark?

Mr. Clark: Five.

Trial Examiner Batten: Five pages?

1079 Mr. Clark: Yes, sir, we ask to withdraw it and substitute a copy.

Trial Examiner Batten: Yes, you may withdraw it. I suppose you will have that copy for us tomorrow morning, Mr. Clark?

Mr. Clark: Yes.

(Thereupon the document above referred to, was marked BOARD'S EXHIBIT NO. 27, and received in evidence.)

Trial Examiner Batten: You may proceed, Mr. Engelhard.

Q. (By Mr. Engelhard.) Mr. Greget, in any of the activities that you engaged in personally with respect to the organization of the Independent Union, had you in any manner been requested by any of the company officials to do or not to do any particular thing?

A. No, sir.

Q. Outside of the conversation you had with Mr. Falk at

the time—that was on the 13th of April in his office about the attorney—did you at any other time in connection with your activities in organizing the Independent Union, talk to any other officer or any other supervisory person regarding the organization of the Independent Union?

A. No.

Mr. Rissman: That date was April 12th.

Mr. Engelhard: What is that?

1080 Mr. Rissman: April 12th.

Mr. Engelhard: He said he saw Mr. Falk on the 13th, that was his testimony.

Mr. Rissman: On direct examination he said the 12th.

Mr. Engelhard: No, that was Mr. Adamski, this morning, who said the 12th. Men disagree as to dates.

Trial Examiner Batten: Well, I don't think it is material.

Mr. Engelhard: No, it is not material.

Mr. Rissman: It is just another discrepancy.

Q. (By Mr. Engelhard.) During the time that you were organizing the Independent Union with your fellow employees, did you receive any information from any of the co-organizers with you, that any officer of the company or any supervisory employee of the company was seeking to influence the court that you and the rest of the organization—the rest of the organizing employees should take?

A. No.

Q. You would say then that this union was organized by you employees because you wanted it?

A. Yes.

Mr. Engelhard: That is all.

Redirect Examination.

Mr. Rissman: Do you have any questions, Mr. Clark?

Mr. Clark: No.

1081 Q. (By Mr. Rissman.) Mr. Greget, do you recall whether or not you had any meeting with Mr. Dick Falk, Richard Falk, with reference to the company union or unions in general?

Mr. Engelhard: Now just a moment.

Q. (By Mr. Rissman.) (Continuing.) I mean the Independent Union or unions in general.

A. You are not referring to any meetings below the hospital?

Q. Any meeting around that time below the hospital, or in Mr. Richard Falk's office.

A. Well, Mr. Richard Falk was called in to one of the meetings that we had below the hospital.

Q. That was on a different day from the meeting at which Mr. Harold Falk was called,

A. Yes.

Q. For what purpose was Mr. Richard Falk called in?

A. I believe it was for the purpose of explaining to us the Severson Act.

Q. What is Mr. Richard Falk's position in the company, do you know?

A. I couldn't say.

Q. You have testified that Mr. Landrey was one of the men who was originally interested with you and others in creating an independent union, is that true?

A. Yes.

Q. When did Mr. Landrey leave the group that was
1082 creating this union and cease being active for the Independent Union?

A. The last time that he met with us was at the attorney's office.

Q. At Mr. Burke's office?

A. Yes, sir.

Q. Now, you are referring now to the very first meeting you had with Mr. Burke.

A. Yes, sir.

Q. And that was the last time Mr. Landrey participated in any activities on behalf of the Independent Union or its creation?

A. That I remember, yes.

Mr. Lamfrom: What was the date?

Mr. Rissman: The first meeting with M. Burke.

Mr. Lamfrom: April 13th.

Trial Examiner Batten: I believe that was the 14th, wasn't it?

Mr. Engelhad: The 14th.

Q. (By M. Rissman.) Do you know, and can you tell us why M. Landrey left the activities of the Independent Union?

A. I could not.

Q. Did he ever tell you why he left?

A. No, sir.

Q. Did you ever discuss with any of the other employees who were active on the Independent Union the reason
1083 why Mr. Landrey left?

A. I did not.

Q. Did you ever hear why he left?

A. No.
Q. Do you know now why he left?
A. No, sir.
Q. Have you heard up until now why he left?
A. No, sir.
Q. Did you ever inquire?
A. No, sir.
Q. Have you any idea as to why he left?
A. No, sir.
Q. When you were at Mr. Burke's office on that first meeting, who suggested the name for the Independent Union? You men, Mr. Burke or Mr. Clark?
A. It was I that suggested that name, and after some discussion they agreed upon that name.
Q. Did Mr. Burke or Mr. Clark make any suggestions as to what the name of the organization—what name the organization should adopt?
A. Not that I remember.
Q. Can you tell us why you chose the name you did choose?
A. Well, because I thought it was the most fitting.
Q. Did you have in mind at that time that Mr. Burke and Mr. Clark also represented the Independent Union of 1084 Harnischfeger Employees?

Mr. Engelhard: Now just a moment, there is no proof here that they at that time represented that organization.

Mr. Lamfrom: If he knows what it is, what is the relevancy?

Mr. Clark: Furthermore, it is not so.

Mr. Lamfrom: Don't go out of your way.

Mr. Rissman: I don't have to go out of my way.

Trial Examiner Batten: I don't think that question is particularly material. If the witness happens to know the answer, I see no objection to him answering it.

Q. (By Trial Examiner Batten.) As far as you know, Mr. Burke and Mr. Clark had represented other unions?
A. Yes.
Q. When did you know that for the first time?
A. Oh, that was, I would say, a year and a half or two years.
Q. At the time you said at Mr. Falk's office that Mr. Burke was O.K., you knew that Mr. Burke and Mr. Clark had in the past represented independent unions, is that it?
A. Well, the were engaged in some union activities.
Q. (By Mr. Engelhard.) I understand you testified on direct examination—

Mr. Rissman: I am not finished, Mr. Engelhard.

Mr. Engelhard: Let me put this so as to connect with the Examiner's question.

1085 Mr. Rissman: All right.

Q. (By Mr. Engelhard.) You had known that Mr. Burke represented some side of the Ward-Allen labor controversy?

Mr. Rissman: He didn't say "labor controversy."

Trial Examiner Batten: He didn't say "labor controversy." He made no reference to labor controversy when he gave that.

Mr. Engelhard: I understood that.

Trial Examiner Batten: No.

Q. (By Mr. Engelhard.) Well, did you know at the time when Mr. Burke represented somebody in the Ward-Allen matter that you referred to, that was a labor matter?

A. He was engaged in some union activities there, yes.

Q. (By Mr. Rissman.) Why didn't you testify on direct examination when I asked you if you knew what activity it was in the Ward-Allen matter?

Mr. Engelhard: It seems to me you asked him whom he represented.

Mr. Rissman: The record will speak for what I asked.

Trial Examiner Batten: I presume I will have to instruct the reporter to read the question to the witness.

Now, there is no doubt in my mind but what counsel tried to secure from this witness information, and as I recall it, he had a very poor recollection.

Mr. Rissman: The witness had a very poor recollection.

1086 Trial Examiner Batten: Yes, not counsel.

And on this particular matter my recollection is that he was very indefinite about it and his recollection was very poor.

I will ask the reporter to look it up tonight. Don't put this in the record.

(Discussion outside the record.)

Trial Examiner Batten: If you will, be here tomorrow at 9:30.

Mr. Rissman: I would prefer to discontinue my examination of this witness until we have that information.

Trial Examiner Batten: Mr. Clark, are there any questions?

Mr. Clark: No, except I would like to straighten out this Ward-Allen business.

Trial Examiner Batten: Yes, we will be able to do that tomorrow morning.

Mr. Lamfrom: I could tell you all about that.

Trial Examiner Batten: I think we will adjourn until tomorrow morning, gentlemen.

(Whereupon, at 5 o'clock P. M. August 18th, 1937, the hearing was adjourned to 9:30 o'clock A. M. August 19th, 1937.)

1087 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

(Caption—XIIC57 and XIIR85)

Room 409, Milwaukee County Court House,
Milwaukee, Wisconsin,
Thursday, August 19, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before:

James C. Batten, Trial Examiner.

Appearances:

Robert S. Rissman, and
S. G. Lippman, Attorneys on behalf of the National Labor Relations Board.

A. G. Goldberg, 511 Warner Building, Milwaukee, Wisconsin, appearing for International Union of Operating Engineers, Local 311, (arrived after hearing convened).

1091 Giles F. Clark, of Alexander, Burke & Clark, 110 East Wisconsin, Milwaukee, Wisconsin, appearing for Independent Union of Falk Employees.

Lamfrom, Tighe, Engelhard & Peck, by Leon B. Lamfrom, and A. J. Engelhard, appearing for The Falk Corporation.

1092 Proceedings.

Trial Examiner Batten: Mr. Goldberg, I notice, is not here, but, in accordance with his agreement with the Trial Examiner, we will proceed.

Mr. Greget, I believe you were on the stand.

LESLIE GREGET, a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Redirect Examination (Continued).

Trial Examiner Batten: Yesterday, at the close of the hearing, we requested the reporter to go back in his record and secure certain questions and answers in the record pertaining to this witness, and he has furnished me with the following transcript from his record.

You were asked the question by Mr. Rissman:

"Q. (By Mr. Rissman.) Did you know Mr. Burke?

"A. No, sir.

"Q. You had never heard of him before?

"A. No, sir.

"Q. You had just heard his name, or heard something about his reputation?

"A. I heard something about his reputation; I also read about Mr. Burke in the paper.

1093 "Q. What did you read about him in the paper?

"A. Well, different cases that he had sometime back.

"Q. Do you recall any particular cases, the type of cases?

"A. It seems to me that he represented Ward-Allen cases at the time.

"Q. Represented who, do you know?

"A. I couldn't say.

"Q. Did he represent a labor organization?

"A. I couldn't say.

"Q. Or, did he represent the company?

"A. I just remember reading his name.

"Q. Do you recall his name in connection with any other type of cases?

"A. I don't recall right now, but I read of it several times."

Then the question which was continued until this morning was:

"Q. Why didn't you testify on direct examination when I asked you if you knew what activity it was in the Ward-Allen matter?"

That is the question that is unanswered.

Mr. Lamfrom: The apparent inconsistency of the question now ask with the testimony of the witness must be evident.

He did not testify that he knew what Mr. Burke's
1094 connection was in the Ward-Allen case. There is an inconsistency here.

Trial Examiner Batten: That is the thing that started the discussion, was that Mr. Engelhard asked him a question concerning the Ward-Allen Company, and the labor controversy they were in.

Mr. Engelhard: No, I asked him whether he knew whether there was a labor controversy.

Mr. Lamfrom: What I want to bring out, Mr. Trial Examiner, is this; That there appeared to be an effort here to show that this witness was inconsistent in his testimony, which was picked out by one of the newspapers this morning, and it is an injustice, as the record stands here, as I see it, to this witness.

Trial Examiner Batten: What is the injustice?

Mr. Lamfrom: The injustice is that the witness is apparently made the subject of an inference here, that he has testified inconsistently, and tied himself up, which is not the fact; that that inference carries with it what I indicate is shown by the fact that one of the morning papers commented upon that situation as the witness' having been tied up, or something to that effect.

Trial Examiner Baten: Let's let the witness straighten it out.

Mr. Lamfrom: That's all right, but I mean, the fact
1095 that an inference is cast here is an injustice to the witness.

Mr. Engelhard: I happened to inject into the record, your Honor, a question as follows:

"I understand you to testify on direct examination that you did not know Mr. Burke represented some side in the Ward-Allen labor controversy."

Trial Examiner Batten: Now, Mr. Engelhard, you, of course, knew that his answers did not imply anything concerning a labor controversy.

Mr. Engelhard: Then it is my fault, not his, because I happened to use the expression "labor controversy". Mr. Rissman said, "I remember he didn't say 'labor controversy'. He said 'case'." Then I said, "Did you know Mr. Burke represented somebody in the Ward-Allen matter?"

Trial Examiner Batten: The only point at issue here was, to settle the matter, that you misquoted the testimony of the witness.

Mr. Engelhard: That is my fault, and not his.

Trial Examiner Batten: You may answer that question.

Mr. Engelhard: May I ask the question be repeated to him?

Q. (By Trial Examiner Batten.) The question as it stands is, "Why didn't you testify on direct examination when I asked you if you knew what activity it was in 1096 the Ward-Allen matter?"

A. What was the question before that?

Q. The question in issue is the question which Mr. Engelhard asked you. Lou testified that you knew that there was a labor matter involved in the Ward-Allen matter, on cross-examination; and, on direct examination, you stated that you did not know that.

Now, the question is, why did you give that testimony on direct, and the other testimony on cross-examination?

A. It seems to me like I misunderstood Attorney Engelhard's statement at that time, or his question.

Mr. Engelhard: The record shows what happened, if I can read it.

Trial Examiner Batten: Yes.

Mr. Engelhard: "Mr. Engelhard:"

Mr. Rissman: May this go into the record?

Mr. Engelhard: This is off.

Trial Examiner Batten: It is, of course, understood that this is not the official transcript you are reading from.

Mr. Engelhard: Certainly. This is what it purports to be.

Trial Examiner Batten: It does not need to be in the record, as far as the official transcript is concerned, if you want to advise the witness as to what preceded. Off the 1097 record.

(Off the record.)

Trial Examiner Batten: Now, that is the thing that you may explain, on direct examination where you stated you were not familiar with what the controversy was about.

The Witness: A. I probably didn't mean to say "union activities." I probably meant to say some labor trouble. I just stated it wrong, that's all.

Q. (By Mr. Rissman.) Why didn't you say "labor trouble" when I asked you the question on the direct examination?

Mr. Engelhard: Just a minute.

The Witness: A. Because you probably put the questions to me in a different way.

Mr. Engelhard: He has answered, but I wanted to put an objection that he was never asked that question.

Mr. Rissman: He certainly was. The record is full of it. This witness does not remember one question from another.

Mr. Engelhard: When you slam your papers that way, we can't hear. I would like to refer, Mr. Trial Examiner, to what you read.

Trial Examiner Batten: The question asked by Mr. Rissman was "Did he represent a labor organization?" Answer: "I couldn't say."

Mr. Engelhard: He doesn't say now.

1098 Trial Examiner Batten: Just a minute, until I get this thing straightened out, or try to, at least.

What was the answer to the last question, Mr. Reporter?

(Record read by the reporter.)

Trial Examiner Batten: I think the record is sufficiently clear, we will just dispose of it that way. You may proceed, Mr. Rissman.

Q. (By Mr. Rissman.) Now, Mr. Greget, at the time of your first meeting at Mr. Burke's office, was there any discussion as to whether or not this new organization was going to be incorporated, or just an association?

A. Yes, we had a discussion on that.

Q. And what was decided as to what form of organization it would be?

A. I don't think it was decided on that day. We could either go along as an association, as we were instructed by Mr. Burke, or incorporate any time from there on.

Q. Was it at that meeting that Mr. Burke said you could run along as an association until you later decided what to do?

A. Yes.

Q. When were you at Mr. Burke's office with two other men, when you were asked to sign the articles of incorporation?

A. That was a day or two later than the day we were there the first time.

1099 Q. That is the occasion when the three of you did not sign?

A. Yes.

Q. And you stated on cross-examination, in response to

questions by Mr. Engelhard, that you did not want to sign because you did not know the responsibility of signing incorporation papers?

A. Yes, sir.

Q. At the meeting of April 18th, at the North Avenue Auditorium, you say it was decided that the organization would not be incorporated, is that your testimony?

A. At the time, yes, at that meeting.

Q. But, on the following day, April 19th, as the record indicates, the documents, articles of incorporation, were signed, and on the same day filed with the Secretary of State at Madison, Wisconsin?

A. As much as I know, yes.

Q. Now, between the meeting of April 18th and the signing of the documents on April 19th, what occurred to change the purpose or the nature of the form of organization?

A. Is that the time between the first meeting and the time that the papers were signed?

Q. That's right.

A. What happened in between there?

Q. That's right.

1100 A. I believe I stated that yesterday, that we were talking outside of the hall, Mr. Trost, Mr. Burke, and myself, about having the union incorporated.

Q. Although you had just come out of a meeting where it was decided not to be incorporated?

Mr. Clark: I object to that, as not stating the facts as brought out. As I understand, nothing was done at that meeting.

Q. (By Trial Examiner Batten.) Didn't you say that at the meeting it was decided that you would run along as an association for the present?

A. I said it yesterday.

Q. You said it again this morning.

A. To go along as an association.

Trial Examiner Batten: Yes. I think the question is proper. Apparently that is what they were going to do.

Q. (By Trial Examiner Batten.) The question is, what happened between the close of the meeting and the next day when the articles of incorporation were signed? Did the board of directors take any action changing that? Who decided that?

A. I beg your pardon. We had no board of directors at that time.

Q. Then, who did decide that you were going to incorporate, instead of remain an association?

1101 A. That was done during this little intimate talk that we had between the three of us. Just then Mr. Wilson came along.

Q. Tell us who it was who said, "I think we had better incorporate," if anyone did say that.

A. We were talking about having the union incorporated, and then I forget the remarks, Mr. Wilson came along, he heard what we were talking about, and he immediately said, "I will sign those papers if I can get someone to sign with me."

Q. (By Mr. Rissman.) So that the reason today the Independent Union of Falk Employees is an independent corporation is because of a little intimate talk between the union and three employees?

Mr. Engelhard: Between who?

Mr. Rissman: Between the attorney and three employees.

Mr. Clark: You didn't say what you meant.

Mr. Rissman: Will you read the question, and substitute "attorney" for "union"?

(Question read as follows:)

"Q. (By Mr. Rissman.) So that the reason today the Independent Union of Falk Employees is an independent corporation is because of a little intimate talk between the attorney and three employees?")

The Witness: A. I would think so.

1102 Q. (By Mr. Rissman.) You say you paid for the application blanks?

A. I did.

Q. How much did you pay for them?

A. Well, there was the application blanks, and the notices of the first meeting.

Q. How much was the printing bill for those items?

A. I believe it was eight dollars and some cents.

Q. Were you reimbursed for that?

A. What?

Q. Did you ever get your money back?

A. Yes, sir.

Q. From whom?

A. From the Independent Union.

Q. When?

A. After we were organized.

Q. Did they pay you by check or cash?

A. If I am not mistaken, it was by check.

Q. At the time you had these application cards and notices of the meeting of April 18th printed, you knew, did you not, that they were to be used for the purpose of creating a union?

A. I did.

Q. Those items as printed do not have on them the union printing label, have they?

1103 A. No, sir.

Q. Do you know that they were printed by a union printer?

Mr. Engelhard: I move those questions and answers, those that have been answered, be stricken.

Trial Examiner Batten: They may be stricken.

Mr. Engelhard: That is entirely immaterial. What kind of an idea have you got now?

Q. (By Mr. Rissman.) Mr. Falk didn't tell you or anybody else not to indicate that he recommended or suggested the names of attorneys, did he?

A. Will you read that question?

(Question read by the reporter.)

The Witness: A. No, sir.

Q. (By Mr. Rissman.) But you say he did hesittae before mentioning any names, and he did state "I don't think there is anything wrong with it," and then suggested the names?

A. Yes, sir.

Q. And the thought to conceal the fact that Mr. Falk did mention those names was your own?

Mr. Lamfrom: Just a minute, please. I think the evidence speaks for itself on that, and there is no necessity for counsel doing it.

Trial Examiner Batten: May I ask you, Mr. Rissman, are you going to go over the entire testimony of this man again this morning?

1104 Mr. Rissman: No, sir.

Trial Examiner Batten: I think all those matters were very fully covered yesterday. I think our time is too valuable to carry this witness through that whole story again.

Mr. Rissman: I didn't intend to, Mr. Examiner.

Mr. Lamfrom: I move the question be stricken, because it carries with it something that is a matter for the Trial

Examiner to determine, not for the questioner, by the word that he used "conceal".

Trial Examiner Batten: As I understand it, you made a formal objection to the question?

Mr. Lamfrom: That I did.

Trial Examiner Batten: The objection will be sustained.

Mr. Rissman: That's all.

Mr. Lamfrom: That's all.

Mr. Clark?

Mr. Clark: Nothing.

Trial Examiner Batten: Mr. Goldberg?

Mr. Goldberg: No questions.

Trial Examiner Batten: You have none, Mr. Clark?

Mr. Clark: No.

Trial Examiner Batten: That's all.

(Witness excused.)

Mr. Rissman: Mr. Hedberg.

1105 HENNING E. HEDBERG, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Rissman.) What is your name?

A. Henning E. Hedberg.

Q. Are you employed by The Falk Corporation?

A. Yes, sir.

Q. (By Trial Examiner Batten.) You will have to talk a little louder, Mr. Hedberg, so the lawyers can hear you.

A. Yes, sir.

Q. (By Mr. Rissman.) How long have you been employed there?

A. About four years.

Q. What is your present title?

A. Welding foreman.

Q. How long have you been welding foreman?

A. Since about the first of May.

Q. 1937?

A. Yes, sir.

Q. How many men work under you, Mr. Hedberg?

A. Twenty-one.

Q. Have you ever engaged in any discussion with em-

ployees regarding your opinions on labor organizations in the plant?

1106 A. I have had conversation, yes, sir.

Q. And you have expressed your opinions to them?

A. Well, I don't know as I have expressed my opinion so much.

Q. Have you ever expressed any preference of one type of labor organization over another type?

A. I don't believe so.

Q. Did you tell any of the employees that you thought the Independent Union was a better organization than the C. I. O.?

A. No, sir.

Q. Do you recall a conversation you had with Mr. Grant Neal, where you stated that "The C. I. O. will do you no good. The company is going to fight it."?

A. I don't remember ever having a conversation with Mr. Neal.

Q. Of any kind?

A. Well, I have had conversation with him, but not on labor.

Q. Did you ever ask Mr. Neal when he was going to join the Independent Union?

A. No, sir.

Q. Did you ever ask anybody that?

A. Not that I know of.

Q. Do you know how many men in your department

1107 are members of the C. I. O.?

A. I wouldn't know how many there are, no.

Q. Do you know any who are?

A. Yes.

Q. How do you know?

A. Well, they carry a button.

Q. Aside from the buttons, do you know?

A. I only have one man that I know, and he told me.

Q. Are there any employees in your department who were members of the C. I. O., who, after conversation with you, indicated that they would no longer be members?

A. No, sir.

Q. That never occurred?

A. No, sir.

Mr. Rissman: That's all.

Mr. Engelhard: No cross-examination.

Trial Examiner Batten: Mr. Goldberg?

Mr. Goldberg: No.
Trial Examiner Batten: Mr. Clark?
Mr. Clark: None.

Examination by the Chair.

Q. (By Trial Examiner Batten.) Will you tell us what statement you did make? You said you had some conversations. Now, what did you say in those conversations?

A. I don't mean that I had any conversation outside
1108 of the regular routine, going around talking to a man as I go around.

Q. You mean, you have never said anything about any union?

A. We have had talks about the union, they have talked to me about the union, and stuff like that.

Q. You took part in the conversation, didn't you?

A. Yes, sir.

Q. That is what I am interested in, is what did you say. Do you recall any remarks that you made?

A. I don't recall any, no.

Q. Do you remember any conversation had with any men?

A. I don't believe I do. I had conversations about unionism with them, and stuff like that, but I don't remember.

Q. Don't you recall any man you ever talked to about it?

A. I talked to quite a few of them, yes, sir.

Q. Who? Name some of them.

A. Mr. Landry, Mr. Maindle; I wouldn't know any of the others by name.

Q. Do you recall any of the conversation you had with these two men that you mentioned? What did they say, and what did you say?

A. I wouldn't know, no.

Q. (By Mr. Lamfrom.) I can't hear what you are saying, at all.

A. We just simply had general conversation, that's
1109 all that I know of.

Q. (By Trial Examiner Batten.) Did they express their opinions about unions?

A. They expressed their opinions, of course.

Q. In the conversation, did you express your opinion?

A. Well, I never took any sides.

Q. I didn't ask you if you took sides. Did you express your opinion?

A. I don't know whether I have or not.
Q. Well, tell us what you said.
A. I don't know.
Q. You haven't any idea what you said?
A. No, sir.
Trial Examiner Batten: That's all.
(Witness excused.)
Mr. Rissman: Mr. Oristo.

RUDOLPH ORISTO, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name, please?
A. Rudolph Oristo.
Q. Were you ever employed by The Falk Corporation?
A. Yes, since 1926 to 1933.
1110 Q. And what was your work there?
A. Grinder.
Q. During the time that you worked for The Falk Corporation, where did you work?
A. I worked maybe for six months in the shop assembling shop or floor.
Q. What was your last job there?
A. Grinding.
Q. Where was that work?
A. It was in a special shack built for the grinders, for the grinding machines, close to the machine shop. I worked all day long there.
Q. Nobody else worked with you in this special shack?
A. No.
Q. And what was the reason for having your work in a special shack seperate from the other production departments?
A. Well, I learned that the dust from the grinding hurts the other machinists, so they removed the machine to another place.
Q. Directing your attention to approximately thirty days before your discharge in 1933, did you become a member of any labor organization?
A. Yes.
Q. Which one?

A. Machinists Union 66, affiliated with the American
1111 Federation of Labor.

Q. And you joined that union after the N. I. R. A. was enacted?

A. After that, at their first meeting.

Q. Relate to us, Mr. Oristo, the fact as to whether or not in your work in the special shack, doing this grinding, you ever had much occasion to see your foreman or supervising officials around, prior to the time you joined the union?

A. No; they came very seldom.

Q. And what was the fact after you joined the union?

Mr. Lamfrom: It appears here, Mr. Examiner,—I didn't know anything about these facts—but it appears so far that this gentleman was discharged in 1933. For what I don't know. Here is a proceeding, in the year 1937, under the Wagner law, in which this company is charged with some unfair labor practices, and specifically, among other things, that it discharged one Kinch for activities of that type.

Now, it appears from all that I can gather up to date, that this testimony is now, and as it proceeds, will probably be, entirely irrelevant, incompetent and immaterial to this proceeding.

Let us assume for the purpose of this discussion—

Mr. Rissman: Is this off the record?

Trial Examiner Batten: Just a minute. Off the record.
1112 (Discussion outside the record.)

Trial Examiner Batten: That testimony on this matter will be received for this purpose only: To show the labor relations history of the respondent, not to prove, for instance, that this man is entitled to be or should be reinstated.

The only purpose for which it will be received is the same purpose for which we will receive testimony to show, over a period of years, the labor relations, attempts of unions to organize or not organize in the plant of the respondent, simply for purposes of labor relation history, and for no other purpose.

(Discussion outside the record.)

Trial Examiner Batten: I do think it is proper to show, within recent times, the history of labor relations of this plant, how they were handled, if they were handled at all, but simply for that purpose.

Mr. Lamfrom: My objection has been noted, that I move that the testimony of the witness, to the present time, be stricken, and I object to the question of learned counsel on

the other side, on the ground it is incompetent, irrelevant and immaterial.

Trial Examiner Batten: Objection overruled, and it will be received for the purposes which I have stated.

Mr. Lamfrom: And the motion to strike is overruled?

1113 Trial Examiner Batten: That's right.

Q. (By Mr. Rissman.) Were you an active person on behalf of the International Association of Machinists, Lodge No. 66, during the time of your employment by The Falk Corporation, and after you joined the union?

A. Yes.

Q. Tell us, Mr. Oristo, what reason was given to you by your foreman for your discharge.

A. Well, that day I went for water, there was no water in the shack where I was working, I went to the power house with quart bottle, and coming back, I find in the shack I was working in Mr. Carl Senn.

Q. Who is he?

A. He is foreman, big boss in shop 2, he asked me where I had been, and I showed him bottle, I said, "I went to get some water."

He said, "Why didn't you go to machine shop to get water?" I said, "I have to have every little while a drink, and going to the machine shop is wasting time, so I bring it in bottle."

Q. Why didn't you get water in the bottle in the machine shop?

A. There are no faucets, I couldn't take in there the bottle.

Q. Where did you have to go to fill this bottle with water?

1114 A. I have to go to power house.

Q. And that is a little farther from your place than the machine shop?

A. Yes, that is farther.

Q. And he discharged you for being absent from your work too long?

Mr. Lamfrom: Just a minute.

Trial Examiner Batten: Let the witness testify why he was discharged.

Mr. Engelhard: Not only that, but he has not answered the question that was put to him, what did the foreman tell him. He never answered that question.

Q. (By Mr. Rissman.) Tell us what the foreman told you. Just finish your story.

A. What was my last?

Q. (By Trial Examiner Batten.) The question is, what did the foreman tell you when he discharged you, what did he say?

A. Yes. He asked me where I have been, so I explained I was for water, and he said why don't I go to machine shop, and I explained it is a wasting of time, so I bring in a quart of water, to have it handy there, and I told him I can't drink that water in machine shop, it is well water, there is too much iron in it, I prefer the city water which is in the power house.

1115 He said, "Well then, it is too bad for you if you can't drink that water."

I said, "What you mean?"

He said, "Well, you will see."

I said, "Do you intend to discharge me?"

He said, "You will find it out. Then he left my shop. He came back a little after I came back, and said, "You are discharged. Come along."

Q. (By Mr. Rissman.) And where did he take you? Where did you go?

A. Then he took me along to Machine Shop 2, there was Mr. Harold Falk. He came to Mr. Harold Falk, he said, "Mr. Falk, I have discharged this man. I have discharged this man, and he will tell you the rest."

Q. Did you tell Mr. Falk anything then?

A. Yes. Mr. Carl Senn left, and Mr. Falk was there, he asked me what was it, so I explained him, and after I explained Mr. Falk, I say, "Mr. Carl Senn didn't fire me for going for water, but he fire me because he knows I am active in organizing the men, and that is the reason that he discharge me."

Q. (By Mr. Lamfrom.) That is what you said?

A. What, please?

Q. You said that?

Q. (By Mr. Rissman.) You told that to Mr. Falk?

1116 A. I told Mr. Falk that Carl Senn didn't fire me for going for water, but because he knew I am active in organizing the men, and they would get organized; and Mr. Falk said, "Well, then, you are discharged."

Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Lamfrom.) How far was the power house from the place where you worked?

A. It was the whole length of the machine shop. I don't know how much is that. It is more than double I would have to go to get water in the machine shop.

Q. Is this the only time you went to the power house for water?

A. I went all the year I worked there, there was no water in the shop I worked. I went always.

Q. To the power house?

A. To the power house.

Q. And nobody ever told you not to go to the power house?

A. Never.

Q. Were other employees going to the power house for water?

A. I don't know for others.

Q. Did you ever see anyone working with you that went over to the power house?

A. I was working all alone, except I had too much work, and then I got a helper, so I don't know the other people, 1117 whether they went or not.

Q. Where do you work now?

A. Now, I am unemployed, since July 4th.

Q. July 4th of this year?

A. Yes. I was laid off from project.

Q. Where did you work before July 4th?

A. I worked on Educational Development Project.

Q. That was a Federal project?

A. That was a Federal project.

Q. And before that, where did you work?

A. I worked on Federal Theater.

Q. How long have you been working on Federal projects?

A. On each one about nine months.

Q. You left The Falk Corporation when?

A. In 1933.

Q. (By Trial Examiner Batten.) When in 1933?

A. In August, sometime the middle of August.

Q. (By Mr. Lamfrom.) Sometime the middle of August. Were you employed after that by any manufacturing concern here?

A. No.

Mr. Rissman: I object to this line of questioning.

Mr. Lamfrom: I want to find out about this witness. This is cross-examination.

Trial Examiner Batten: He may answer. I see no
1118 objection.

Q. (By Mr. Lamfrom.) You haven't been employed by any manufacturing concern since?

A. No.

Q. And you are not today, are you?

A. No.

Q. Are you on relief?

A. I am on relief.

Q. How long have you been on relief?

Mr. Rissman: I object to these questions, if the Examiner please.

Mr. Lamfrom: I want to find out about this man. I never saw him before.

Mr. Rissman: This man has no right to pry into his personal affairs. It has nothing to do with his employment at The Falk Corporation.

Mr. Lamfrom: All the surrounding circumstances of this man's life are pertinent to the story that he told here, with reference to his veracity.

Trial Examiner Batten: He has stated he is on relief, or has beeen on it. I don't know as it is particularly matrial how long he has been on it.

Q. (By Mr. Lamfrom.) You haven't had any job, outside of being on relief, if that is a job, and jobs with these Federal undertakings, since you left The Falk Corpora-
1119 tion, have you? You haven't had any job with any private employer?

A. I didn't.

Q. What union are you a member of now?

A. Now the C. I. O.

Q. And this union that you were a member of at the time you were doing organizing work, as you have testified, at The Falk Corporation, was the American Federation?

A. Yes, sir.

Q. And how long have you been a member of the C. I. O.?

A. I don't know exactly. I think three months.

Q. And what union are you a member of?

A. The Falk Union.

Q. The Falk Union?

A. Yes, sir.

Q. You are not employed by The Falk Corporation?

A. I am not.

Q. What is The Falk Union, as you understand it?

A. I didn't get the meaning, what you mean.

Q. What is this Falk Union of which you are a member? I mean, what is it?

A. It is a working organization.

Q. But you are not a Falk employee?

A. I am not.

Q. So that this union to which you belong, which you
1120 call the Falk Union, numbers among its members other people beside Falk employees?

A. I don't know of any other.

Q. Are you the only one that is not a Falk employee that is a member of the union?

A. I don't know.

Q. Did you make application to join this union?

Trial Examiner Batten: I don't think that is at all material. He is a member, and whether he made an application, or paid any dues, I don't think that is material, Mr. Lamfrom.

Mr. Lamfrom: If I may be politely permitted to differ with you.

Trial Examiner Batten: Because, Mr. Lamfrom, the Examiner restricted this witness' testimony simply for the purpose of showing the history of labor relations in The Falk plant.

Mr. Lamfrom: Exactly; and I am testing for veracity and motive.

Trial Examiner Batten: I don't think that has anything to do with motive and veracity, when he joined, or whether there are any other people there that are members that are not presently employed. I don't think that has anything to do with it.

Mr. Lamfrom: It is conceivable, if I may say so—and human relations have indicated such instances—that
1121 this man may have a grudge against The Falk Corporation for some reason or another, and has come up here to testify to certain facts and circumstances.

Trial Examiner Batten: I see no objection to your questioning to see whether he has such a feeling for The Falk Corporation that that may be the reason for his testimony. I have no objection to that.

Mr. Risman: He may be entirely justified.

Mr. Lamfrom: That is your idea.

Mr. Rissman: It may be his.

Mr. Lamfrom: You are so nonpartisan in this case that your attitude is commendable. You always see both sides.

Mr. Rissman: I do not intend to be nonpartisan, Mr. Lamfrom.

Mr. Lamfrom: What do you intend to be?

Mr. Rissman: I intend to prosecute the complaint in this case.

Mr. Lamfrom: And you are an attorney for the National Labor Relations Board, aren't you?

Mr. Rissman: Certainly.

Mr. Lamfrom: And the National Labor Relations Board is hearing this case.

Mr. Rissman: My duty does not require me to be nonpartisan.

Mr. Lamfrom: Our duties do not require you to be a
1122 prosecutor.

Trial Examiner Batten: Do I assume, Mr. Lamfrom, from that, that it is your feeling that the Examiner is not qualified?

Mr. Lamfrom: The Examiner, I am satisfied, is amply qualified.

Trial Examiner Batten: In this case?

Mr. Lamfrom: Sure; not for one minute do I believe he is not. I am well satisfied with him.

Mr. Rissman: Do you question my qualifications, or any partisanship?

Trial Examiner Batten: Now, let us discontinue this, and get along with the witnesses in this case. I think we have wasted enough time in this case. Let's get down to some facts, and find out what it is all about.

Mr. Lamfrom: You will realize, too, we haven't had any witness on the stand yet.

Trial Examiner Batten: I am directing that to everybody within the hearing of the court.

Mr. Lamfrom: All lawyers desire to please the court.

Q. (By Mr. Lamfrom) You don't feel very friendly to The Falk Corporation, do you?

A. Why shouldn't I?

Q. Do you?

A. Don't holler at me.

1123 Q. Do you?

A. Please step over there.

Q. Do you?

A. Step over there, please. Don't come here to scare me. Don't come here and holler at me.

Trial Examiner Batten: Just a minute.

Q. (By Trial Examiner Batten) The question is, do you feel friendly towards The Falk Corporation.

A. Friendly or unfriendly?

Trial Examiner Batten: Will you read the question, please?

Q. (By Mr. Lamfrom) Do you feel friendly to the Falk Corporation?

A. Yes.

Q. Why?

A. Because I hope to get back my job some day.

Q. In other words, you have a good feeling towards The Falk Corporation?

A. I have.

Q. And that good feeling is brought about by the hope that will get your job back, is that right?

A. Yes.

Q. You want The Falk Corporation to feel friendly to you, don't you?

A. Yes.

1124 Q. For the purpose of getting your job back?

A. Yes.

Q. Now, when you were discharged by The Falk Corporation, did you feel friendly towards them?

A. Always.

Q. Always?

A. Yes.

Q. It didn't make any difference to you at all in your feeling?

Mr. Rissman: I object to Mr. Oristo's feeling in the matter. The facts have been stated. If there are any other facts, they should be brought out. He has stated he feels friendly to The Falk Corporation at the present time because he is hopeful of being reemployed there.

Trial Examiner Batten: What was the question?

Mr. Lamfrom: Are you testifying, or the witness?

Trial Examiner Batten: Read the question.

(Question read by the reporter.)

Trial Examiner Batten: I think he may answer that. I think the latitude of the questions the Examiner has per-

mitted in the last three days would permit the witness to answer that.

Q. (By Mr. Lamfrom) Do you remember the question?

A. No.

Mr. Lamfrom: Well, I will repeat it.

1125 Q. (By Mr. Lamfrom) At the time that you were discharged by The Falk Corporation, did you feel friendly to the corporation?

A. Yes.

Q. The fact that you were discharged because, as you claim, you were a member of the union, and were doing union organizing while you were working for them, did not make you feel at all unfriendly to the company?

A. No.

Mr. Lamfrom: That's all.

Mr. Rissman: That's all.

Trial Examiner Batten: Mr. Engelhard?

Mr. Engelhard: I have some questions.

Q. (By Mr. Engelhard) What is your present name, you say?

A. Oristo.

Q. When did you change your name?

A. I changed my name when I got my second papers.

Q. What was it then?

A. Goldmer.

Q. Goldman?

A. Goldmer, G-o-l-d-m-e-r.

Q. Goldmer?

A. Yes.

Q. Was that you name when you were employed by The Falk Corporation?

1126 A. The first time; and then I changed the name during the time I was still employed there, and they changed it officially to Oristo, it was made in the Registrar of Deeds' office.

Q. You sued The Falk Corporation, didn't you?

A. Yes.

Mr. Rissman: I object to that. This has no materiality on his discharge.

Trial Examiner Batten: He has answered it. He said "yes".

Mr. Rissman: I move that the question and answer be stricken.

Trial Examiner Batten: They may stand.

Q. (By Mr. Engelhard) You lost the case?

Trial Examiner Batten: I think that is immaterial, whether he lost or won the case, unless there is some foundation as to when the suit was, and what it was about.

Mr. Rissman: Yes.

Q. (By Mr. Engelhard) When did you sue The Falk Corporation? While you were working there, or after you were discharged?

A. After I was discharged.

Q. What was the suit about?

A. I was sick, I went to the company dispensary, and they sent me out from there.

1127 Q. You sued the corporation on the ground you claimed you were sick from silicosis, is that right?

A. Yes, sir.

Q. You lost that suit?

A. I don't know if is the suit lost yet.

Q. How long ago did you start the suit? How long ago did you start the suit?

A. I think it was in 1933.

Q. But you don't know now whether you have lost the suit?

A. I don't know yet.

Mr. Engelhard: That's all.

Trial Examiner Batten: Mr. Goldberg?

Mr. Goldberg: No questions.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: No questions.

(Witness excused.)

Mr. Rissman: Mr. Kinch, please.

ANTON KINCH, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) Will you state your name, please?

A. Anton Kinch.

Q. Were you employed by The Falk Corporation, Mr. Kinch?

1128 A. I was.

Q. How long were you employed there, during what period?

A. I started there, I believe, late in 1929, about November, I believe.

Q. And how long did you work there?

A. Until December 31st.

Q. 1936?

A. Yes, sir.

Q. And in what position were you employed?

A. Erecting, in the erecting shop.

Q. During the time you were employed there, were you always employed in the erecting shop?

A. Yes.

Q. During the time of your employment in the erecting shop, had there ever been any serious complaints by foremen or others about the quality or nature of your work?

A. I never had any.

Q. What was the fact, Mr. Kinch, as to whether or not you worked during the depression?

A. I didn't get that question, please.

Mr. Rissman: Read the question, please.

(Question read by the reporter.)

The Witness: A. Yes, I worked all through the depression.

Q. (By Mr. Rissman) What was the fact as to whether or not other employees, with greater service records at the company, were employed or unemployed during the depression, while you were employed then? 1129

A. I believe there were quite a few discharged, that is, laid off, older men than I was.

Q. Were there ever any complaints by the company regarding your relationship with fellow-employees, or with your supervisory foreman and others prior to 1936?

A. If there was, I don't know about it.

Q. You were never told of any?

A. No.

Q. Were you a member of the Works Council?

A. I was.

Q. When were you elected or appointed to that position?

A. I have the records here. Am I permitted to look at them?

Q. You may. What kind of records have you?

A. Of the dates.

Q. You may refer to your record, if the Examiner has no objection.

Trial Examiner Batten: I have no objection, if he has a memorandum there and he wants to refer to it.

Mr. Engelhard: That is all right.

Trial Examiner Batten: I do not assume there is an objection?

1130 Mr. Engelhard: That is, I assume it is merely a memorandum of dates, not necessarily a memorandum of the testimony he is to give. You might ask him.

Q. (By Trial Examiner Batten) What is this, a memorandum you made at the time, or what is it?

A. As things went along, I made a memorandum of things that took place of importance, because I had that custom.

Q. You made this memorandum at the time these things happened?

A. Yes.

Trial Examiner Batten: Is there any objection? I guess there is no objection.

Mr. Engelhard: It seems to me, your Honor, that a man should not be permitted to testify from a memorandum.

Trial Examiner Batten: It seems strange to me that you should be the one to object to it, as I think I recall the other day you brought a memorandum up to Mr. Falk to refer to during his testimony.

Now, it seems to me, if one witness is entitled to that privilege, they all are.

Mr. Engelhard: I don't recall any memorandum that I handed him.

Trial Examiner Batten: And I very distinctly remember that you brought it up here and suggested he could use that for the purpose of refreshing his memory, and no one

1131 had any objection to it.

Mr. Lamfrom: That was a document recording a particular proceeding.

Mr. Rissman: So is this memorandum.

Trial Examiner Batten: I don't recall what it was. At any rate, the Examiner will permit him to refer to his memorandum, not for the purpose of reading it, but for the purpose of reference. You may refer to it.

The Witness: What was the question, please?

(Question read by the reported.)

Mr. Engelhard: Just a minute, Mr. Examiner. May I see what he has there?

Trial Examiner Batten: Yes.

Q. (By Mr. Engelhard) Do you mind me looking at this?
A. That's all right.
Q. You have here sheets numbered 1 to 13?
A. Yes.
Q. Were those sheets made at the same time?
A. No. They were made a few days later. Those sheets were written in Florida, copied from different memorandums I had.
Q. This is a written story, isn't it?
A. I don't think it is a story.
Q. It gives everything that occurred over a period of time? I mean, over a certain period of time, you have
1132 got everything in there?
A. During my term of office, yes.
Q. You wrote that when you were down in Florida?
A. Yes.
Q. When did you write this, what was the date?
A. I would say about four or five weeks ago.
Q. In other words, four or five weeks ago you wrote these thirteen pages of memorandum. And you say you took that from what?
A. Well, different small memoranda that I made the day after the meeting, the day after the occurrence. Say, for instance, something took place today, tonight probably I would go home and make a memorandum, because I would remember what took place.
Q. Have you got the original memorandum here?
A. Some I have, yes.
Q. Have you got all of them here?
A. Some of them are not just as legible as they should be, so I wrote them, that's all, and paged them, so I could refer to them.
Mr. Engelhard: Do I understand, Mr. Rissman, it is your purpose to have Mr. Kinch refer to this memorandum whenever you ask him a question about details?
Trial Examiner Batten: I don't think there is any such objection?
1133 Mr. Engelhard: No, if it is just a matter of referring to this in order to get dates, I would not object.
Trial Examiner Batten: I think the Examiner stated he may refer to it for the purpose of dates, but not for the purpose of answering questions, or reading the memorandum.
Mr. Engelhard: I would not have any objecion to that.

Trial Examiner Batten: But merely as a matter of reference. Was that last question answered?

The Witness: A. He asked the question, but I was interrupted.

(Question read as follows:

"Q. When were you elected or appointed to that position?")

The Witness: A. I was on the 10th of June, so that would be on the 9th of June, I was elected.

Q. (By Mr. Rissman) Who told you that you were elected?

A. I wasn't notified officially, it was just one of the boys I learned from in the shop how the election came out.

Q. Did you have any conversation with any of the supervisory officials of the plant prior to your appointment or election to the Works Council, regarding it?

A. Yes.

Q. Which employees?

A. Mr. Henderson and Mr. Hydar.

1134 Q. Who is Mr. Henderson?

A. He is superintendent of the erecting shop.

Q. And Mr. Hydar is the gentleman who testified here the other day?

A. Yes.

Q. What was the conversation they had with you, and when was it, as closely as you can remember?

A. That was on the 5th of June, about 10:00 o'clock in the morning.

Q. What year, Mr. Kinch?

A. 1936. Mr. Hydar and Mr. Henderson came to see me.

Q. What did they say?

A. They wanted to know why I wouldn't run for the office or accept a position on the council. That is really the words they used.

Q. Accept a position on the Works Council?

A. Yes.

Q. Had you been nominated for a position on the Works Council?

A. No.

Q. What did you tell them when they asked you that question?

A. I told them I wouldn't.

Q. What else? Just tell us the conversation that took

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place between you, Mr. Hydar and Mr. Henderson on that day.

A. I stated that I positively would not accept it,
1135 wouldn't consider it, and Mr. Henderson asked me why, and I told him I didn't care to be a rubber-stamp for the corporation.

Q. What else was said?

A. Then Mr. Hydar started, and told me that I was all wrong. "Why", he says, "Mr. Harold Falk is far more broadminder than you think." He says, "We are anxious to get men that know something about the business, that could fight and would fight for the men," and he went on to state different things that took place during the three years that the council was in operation, and so forth; and it was about 12:00 o'clock when they got through. That is, he wasn't through, I really stopped him.

Q. And what did you tell him at that time?

A. I said, "Mr. Hydar, if Mr. Harold Falk knew me as I know myself, I would be the last man that they would want to serve on the council."

Q. Did Mr. Hydar say anything to that?

A. "Well," he said, "he wants you, and the men want you." He said, "They both seem to think that you are the right man." "Well," I said, "there is no other alternative for me, if they think that, then. You know my views."

Q. And did you express your views to them?

A. Yes, I expressed my view, I told them I would not be a rubber stamp for anybody.

Q. Did you explain more fully what you meant when
1136 you said you would not be a rubber stamp for anybody?

A. Well, when he said that, that is, when he began to tell me about Mr. Falk being broad-mined, and that I was all wrong on it, I also told him that if they ever got me there, they have to stand the consequence.

Q. When was the first time that you attended a meeting of the Works Council after that conversation?

A. There was a meeting two days later, on Thursday, which would be on the 11th, I believe.

Q. The date is not important.

A. But it was not official, that is, as far as myself was concerned. I was merely asked to go there, and listen to the procedure and the methods and parliamentary rules, and so forth.

Q. And did you attend Works Council meetings regularly thereafter until the time of your discharge?

A. Yes, sir.

Q. What is the fact, Mr. Kinch, as to whether or not you were at any time, or many times, in agreement or disagreement with activities of the Works Council, as expressed by you at Works Council meetings?

A. Well, one of my first objections was that there was too much time taken up on the canteen business.

Q. Did you express that objection?

A. I have, very strenuously.

1137 Q. Can you relate to us some of the other objections you expressed over the period of months that you were a representative on the Works Council?

A. They are so numerous.

Q. (By Trial Examiner Batten) The question is, can you relate some of them.

Q. (By Mr. Rissman) Some of them, those that stand out in your mind.

A. The first one was when Mr. Jones, one of the members of the council, asked for a raise.

Q. Mr. Jones was an employee representative?

A. Yes.

Q. Or a management representative?

A. An employee representative. I seconded his motion, of course, and the next day Mr. Wolf,—I believe his name is John Wolf—

Q. Yes.

A. (Continuing)—a member of the council, came to see me in No. 3 shop, and told me that he got hell from Mr. Green.

Q. Who is Mr. Green?

A. Superintendent of the machine shop, for voting in favor of the motion. He said that Mr. Green claimed that in one of the previous meetings our predecessors and other members of the council agreed to not ask for a raise for 1936 if they were given, or rather, when they were given, that raise of 5 per cent.

1138 Q. Can you relate to us any discussions had by you with other presentatives of the Works Council, at Works Council meetings, relating to wage increases or bonuses?

A. You mean at the meetings of the Works Council themselves?

Q. The Works Council, yes.

A. We usually met two or three days—I believe first it was the day before the meeting of the council, and we of course discussed various things that we thought were of interest.

Mr. Goldberg: A little louder, please, Mr. Kinch.

The Witness: A. To the interest of the employees or workers, and it was thoroughly understood at this meeting that this raise was going to be proposed. Nobody said at that meeting that such a promise had been made.

Q. (By Mr. Rissman) You are now talking about this raise that was requested by Mr. Jones?

A. Yes.

Q. Were there any other instances aside from that where you and the management and representatives of the council were in agreement or disagreement on the nature of the payments of a bonus to all employees?

A. Yes, but that was following this argument, was the question of the firm losing money, that was the next argument.

Q. How was that made known to the Works Council?

1139 A. When this raise was asked by Mr. Jones, Mr. Pritzloff took the floor.

Q. Who is Mr. Pritzloff?

A. Mr. Pritzloff is superintendent of the foundry.

Q. Go ahead.

A. He took the floor and stated that we was making a terrible mistake, that the firm was losing money, and it would be impossible for the firm to meet any such a demand. He said that his department alone, the foundry, was losing an average of $25,000.00 a month, and went on to state many things about how they were losing money.

I asked him, I said, "Mr. Pritzloff, how do you account for those losses, how those losses occurred?" Well, he said he didn't know, he said he gets his report from the office.

I said, "Well, you being superintendent of the Works, it seems to me you ought to know something about it." Well, all he knows is that he gets the statement from the office, and he goes by that, that they been losing $25,000 a month, I don't know for how long.

Q. Was there any investigation made by you or any other members of the Works Council to determine whether or not the company was making or losing money at that time?

Mr. Lamfrom: Just a minute. He didn't testify to that. He said a loss of $25,000.00 a month in the foundry.

1140 Trial Examiner Batten: Will you read the question, please?

(Question read by the reporter.)

Trial Examiner Batten: Is there any objection that question?

Mr. Engelhard: He assumed that the man testified that the $25,000.00 a month was a loss of the entire business.

Trial Examiner Batten: I certainly didn't infer that. The question is, did he make any investigation to determine whether or not the company was losing money.

Mr. Lamfrom: Standing that way, of course, there is no objection.

Trial Examiner Batten: That is the way I understood him, is whether he made an investigation to determine whether or not the company was making or losing money at that time.

Mr. Risman: The witness has testified that Mr. Pritzloff said at the meeting that "the company is losing money. In the foundry alone, it is losing $25,000.00 to $30,000.00 a month."

I now ask if there was any investigation made to determine whether or not the company was making or losing money.

Trial Examiner Batten: Isn't that just the way I stated it?

Mr. Rissman: Yes.

Trial Examiner Batten: You may answer.

1141 The Witness: A. May I be permitted first to finish what took place when Mr. Pritzloff said they were losing money?

Trial Examiner Batten: Was there some further talk or conversation?

The Witness: Yes.

Q. (By Mr. Rissman You may finish it.

Trial Examiner Batten: Tell us what it was.

The Witness: A Mr. Green took the floor and stated that the machine shop would just about make enough to effset the losses in the foundry.

Q. (By Mr. Rissman) Now, can you answer my question?

A. Now, yes.

Trial Examiner Batten: You may answer that question.

The Witness: I don't know just what it was.

Q. (By Trial Examiner Batten) The question is, did you make any investigation to determine whether or not the company was making or losing money?

A. Yes, I have.

Q. Tell us what you did, and what you found.

A. The first thing I done was, I went to Madison, Wisconsin, on the 20th of June.

Q. (By Mr. Rissman) 1936?

A. 1936, to look over the income tax reports of The Falk Corporation, and to see for myself if there was such a loss.

Q. What did you find, if anything?

1142 A. I found that there was some losses in the foundry, but not to that extent.

Q. Did you report the results of your investigation to the employees or to the oWrks Council, either one?

A. No, nothing generally, only when discussion came up, I would say, "Why, naturally, Mr. Falk always was broadcasting around about losing money, losing money," and everybody felt like they were living on charity.

Mr. Lamfrom: I suggest that the witness' conclusions be eliminated. He is enthusiastic enough, without giving his conclusions.

Trial Examiner Batten: I do not presume that his statement will have any effect on the Examiner.

Mr. Lamfrom: Perhaps not, if you insulate yourself from that, we will probably get along very well. You know, occasionally, enthusiasm gets a fellow.

Q. (By Trial Examiner Batten) Will you proceed and tell us, then, what investigation you made, and what you found, please?

A. Well, I found that the foundry did show some losses on their report, as the report read, that is, showed; but that, as a whole, the company was doing very well.

Q. (By Mr. Rissman) Did you make any use of this information you found in the income tax reports of the company at Madison, Wisconsin?

1143 A. Of course, I made use of it.

Q. In what way have you made use of it, Mr. Kinch?

A. In forming my proposal! I couldn't do it any otherwise.

Q. Tell us about the item you refer to as your proposal. What was it, when did it occur, and what conversation you have had with company representatives?

A. It was sometime in October, I believe, around the 5th.

Q. (By Mr. Lamfrom) 1936?

A. 1936, yes.

Q. (By Mr. Rissman) All of your conversation about ac-

tivities of the Works Council, and your proposal, are in the year 1936?

A. Yes, all of them.

Q. Go ahead.

A. Mr. Henderson came to me, it was about twenty minutes, probably, to 12:00.

Q. Who is Mr. Henderson?

A. He is a foreman or superintendent of the erecting shop; and told me that Mr. Harold Falk wanted to see me. I said, "Wanted to see me?" I asked him. I said, "I didn't know that Mr. Falk knew that I worked here." "Well, he wanted to see you."

And, if I may be permitted to use a word that he used as I started out, without flattering myself, or patting myself on the back, this is the words that he used:

1144 Q. (By Trial Examiner Batten) Who used?

A. Mr. Anderson—I mean, Mr. Henderson.

He said, "Well, if they want somebody on the Council that knows something about the business, they have mighty well got it."

Q. Go ahead, tell us, when you got to Mr. Falk's office, what was said.

Q. (By Mr. Rissman) What conservation was had between you and Mr. Falk on that day?

A. As I entered the office, he said he sent for me because he understood I knew something about the business, and he looked at a vacant chair that was next to him, and asked me to be seated.

Q. Tell us the conversation you and Mr. Falk had.

A. He had in front of him what seems like the monthly balance sheet, and he began to point out to me the losses that they were suffering. He said, "Last month, we lost around $18,000.00," and he said, "you fellows in the shop seem to think we are making plenty of money."

I said to Mr. Falk, "I think your bookkeeper made a mistake."

He kind of looked at me with surprise, and I told him, I says I have a financial report on them what I thought was authentic, and I didn't see anything in there that he should worry about the financial status of the company, and

1145 then he said something else, and he pulled out his match, he said, "By Jove, I have an appointment downtown to lunch, a lunch appointment," or something, "can I see you tonight, or this evening?"

"On this proposition?", I asked him.

He said, "Yes."

Q. (By Mr. Rissman) What proposition do you refer to Mr. Kinch?

A. On this financial status of the company, he wanted to acquaint me with their business.

Q. What did Mr. Falk say?

A. He said "yes". I said, "If you want to see me on this proposition, I would rather you would see me on my own time."

He said "Why?"

I said, "Well, I would rather have it on my own time."

"Well," he said, "all right. How about tonight?"

I said, "No, Mr. Falk, I can't do it tonight. How about tomorrow night?"

"Tomorrow night is okay," he said. "What time tomorrow night?"

I said, "4:30."

He said, "Well, why not come here at 4:30?"

I said, "That will be all right with me." So I arrived the next day at his office, about twenty minutes to 5:00. Mr. Herman Falk was sitting right beside him.

1146 Q. Who is Mr. Herman Falk?

A. Mr. Herman Falk is the president of The Falk Corporation.

Q. Go ahead, tell us the conversation that was had at that meeting.

A. Well, there was so much of it. It started about twenty minutes to 5:00, and lasted to 7:00, so there was quite a bit of it.

Q. What was the subject matter discussed?

A. Oh, the whole substance was that their efforts was bent towards convicing me that they were losing money. Well, of course, I began to point out to them the money that they was making.

Q. Did you inquire why they wanted to convince you that they were losing money?

A. I believe I did say that I was working in the shop, and that I didn't see any good could be had from me knowing those things; that after all I was working in the shop, and me knowing anything about the business was really no help to them, I couldn't see it.

Q. (By Trial Examiner Batten) Who said that?

A. I said that to Mr. Falk.

Q. (By Mr. Rissman) Was there any answer to that?

A. Well, he says, "You are a member of the Council." I said, "Yes, that is true, but even then, I don't say anything." Well, they kept on pointing, and telling me of
1147 what they lost, and how they lost it, and I finally got pretty tired of it.

Q. (By Mr. Lamfrom) You got tired of it?

A. Yes.

Mr. Lamfrom: Yes.

The Witness: And I says to Mr. Falk, I said, "Mr. Falk, you have been preaching here about all the money you are losing," I says, "you are not losing any money. You are making money, you have been making money."

"Oh," he says, "we haven't made anything since 1929."

"Well," I says, "you have made pretty good in 1929."

"Well, not so good."

So I mentioned the figure, and I asked him if I was right. He said, "Yes, that is near right."

Q. (By Mr. Rissman) Did you have a memorandum with you containing the figures?

A. No, I didn't.

Q. You knew them from memory?

A. Yes.

Q. And Mr. Falk indicated that the figures you mentioned were correct?

A. That they were close, yes.

Q. (By Mr. Lamfrom) The 1929 figures?

A. Yes; but later I mentioned others.

Mr. Lamfrom: Well, I mean just as far as you have
1148 gotten now.

Q. (By Trial Examiner Batten) Go on and tell us what happened at this meeting, now.

A. So he then insisted that they haven't made any money since. So I told him, in fact, I told Mr. Falk, "Even in 1930 and '31 you did well, didn't you?"

Mr. Engelhard: I can't hear what you are saying, Mr. Kinch. Talk a little louder, please.

The Witness: I said to Mr. Falk then, "Well, you made pretty good in '30 and '31, didn't you?" He said, "Well, I don't know that we made any money then."

I said, "Well, I think you made some money." And I didn't see really any sense in getting in any argument with them. After all, they were my boss.

Q. (By Mr. Rissman) Well, just tell us what occurred then.

A. That was all there was to it.

About 7:00 o'clock, I said to Mr. Falk that I had a proposition that I was working on, and that was the reason I got that information; it wasn't any use to form any proposition on an empty pocketbook, I wanted to see if there was anything in it.

Q. (By Mr. Lamfrom) Whose pocketbook is it your referred to?

A. Mr. Falk's, of course; not mine.

Q. Yours wasn't empty, evidently.

1149 A. He asked me what the proposition was. I explained it to him roughly, classification, and I told him I thought that was one of the biggest troubles he had in the shop, was dissatisfatcion, the men was dissatisfied because it was not classified. In other words, my contention was that the men, many men in the shop, wasn't getting what they were really entitled to, some was and some wasn't, and naturally, that caused dissension between the men, and wherever anything like that exists, there is bound to be dissatisfaction.

Q. (By Trial Examiner Batten) Are you repeating now what you told Mr. Falk?

A. Yes.

Q. (By Mr. Rissman) Go ahead.

A. And Mr. Falk says, Mr. Herman Falk said, that he thought of a proposition of that kind once, but that he didn't think it would work.

He says, "You know," he says, "men in the shop are rather jealous of their hourly rate, and if a classification would take place, naturally it would reveal the hourly rate to one another."

I said, "Well, that is the best thing about the proposition."

Q. Then you discussed various details of this proposition?

A. Yes, various phases of it.

Mr. Lamfrom: He is telling what he told Mr. Falk

1150 and what Mr. Falk told him. That is what we are interested in.

Q. (By Trial Examiner Batten) When you left, what was the arrangement? Were you to see him again?

A. Mr. Falk said then, "Reduce your proposition to writing, and we will see how it looks."

Q. Did you leave then?

A. Well, a few minutes after; we talked about something else.

Q. Did you make an appointment then to come back?

A. I didn't. I will tell you why.

Q. I don't care why. What I am interested in, is, did you make an appointment.

A. No, I didn't.

Q. (By Mr. Rissman) Mr. Kinch, did you promise Mr. Falk that you would come back with this proposal reduced to writing?

A. No, I didn't.

Mr. Lamfrom: Mr. Falk didn't testify he promised. Mr. Falk testified he said he would come back.

Q. (By Mr. Rissman) Did you say you would come back?

A. No, I didn't.

Q. (By Mr. Lamfrom) Did Mr. Falk ask you to come back?

A. No.

Trial Examiner Batten: We will take a ten-minute recess.

1151 (A short recess was thereupon taken.)

Q. (By Mr. Rissman) Did Mr. Falk ask you to return after this meeting you have just been testifying about? At the meeting, did he ask you to come back at some later time?

A. No. He just said, "Let's see it when you get it, when you reduce it to written form."

Q. (By Mr. Lamfrom) And did you say you would let him him see it?

A. No, I didn't.

Q. (By Mr. Rissman) What was the next step, what else did you do after that in connection with this proposal or proposition that you had?

A. After that, I consulted many workers in various departments about the proposition, what they thought of it, and they seemed to be in favor, so that I put it in writing, and a couple of times at noon, right after lunch time, several of them got together—several of us got together, and I let them read it, and make suggestions, if there was any, and after everybody seemed to put their okay on, I had it written, and made several copies of it, I believe I made seven copies of it.

Q. What did you do with the copies?

A. I attached, I believe, five or six sheets of paper, to each one, then, I don't exactly remember the date, but it was at noon one day that I called on several representa-
1152 tives, workers' representatives of the Council, and gave them the proposal to which the sheets was attached to it, and asked them to read it to their men during the noon-time, and get their approval or disapproval of it, which they agreed to do.

Q. Mr. Kinch, what other sources of information did you seek or consult, in addition to the income tax reports of the company, when you were preparing your proposal or your proposition?

A. I wrote to a number of competitors of Mr. Falk, or rather, people that are in a competitive business.

Q. I hand you herewith Board's Exhibit No. 28 for identification, and ask you to describe it for us, and tell us what it is.

Trial Examiner Batten: What is it? Tell us what it is.

Q. (By Mr. Rissman) Tell us for the record.

A. It is a letter I wrote.

Q. To whom?

A. This particular one was written to the Philadelphia Gear Corporation.

Q. In Philadelphia, Pennsylvania?

A. Yes.

Q. Asking them for the number of hours they work per week?

A. Yes.

Q. The pay for overtime?

1153 A. Yes.

Q. The average hourly wage for mechanics?

A. Yes.

Q. And the average hourly rate for helpers?

A. Yes.

Q. And other such information?

A. Yes.

Q. And they sent you that information as indicated on that letter?

A. Yes.

Q. I hand you herewith Board's Exhibit No. 29 for identification, which is a letter to the D. O. James Manufacturing Company, 1120 West Monroe Street, Chicago, Illinois, signed by you, and ask you if that was a letter written for the same purpose, that was received by you with the same

information, similar information, as that contained on the letter to the Philadelphia Gear Works?

A. Yes. They all were written at the same time.

Q. (By Mr. Lamfrom) The same kind of a letter, is it?

A. Yes. I have written two more that I didn't get reply to.

Q. (By Mr. Rissman) Do you recall to whom you wrote, and did not get a reply?

A. Yes.

Mr. Engelhard: May I ask, Mr. Rissman, whether
1154 these exhibits are replies received by him, or are they his carbon copies?

Mr. Rissman: They are a combination. It is the original letter written by Mr. Kinch.

Trial Examiner Batten: In the form of a questionnaire?

Mr. Rissman: In the form of a questionnaire, with blank spaces, and returned by the original addressee, with the information filled in.

Mr. Engelhard: Oh, I see.

Mr. Rissman: Together with the envelopes, and the necessary post office postmarks, in which Mr. Kinch received his replies.

Q. (By Mr. Rissman) Will you tell us now the other companies you wrote to that did not answer?

A. The Boston Gear Works, Inc.

Q. Where is it located?

A. North Quincy, Massachusetts.

Q. Who else?

A. The Horsburgh & Scott Company.

Q. Where are they located?

A. 5112 Hamilton Avenue, Cleveland, Ohio.

Q. Did you write the letters to those companies on the same date, June 19, 1936?

A. Same date, yes.

Mr. Rissman: I offer Exhibits 28 and 29 in evidence.
1155 Trail Examiner Batten: If there is no objection, they will be reeceived.

(No response.)

(Whereupon, the documents above referred to, marked BOARD'S EXHIBITS NOS. 28 AND 29, were received in evidence.)

Q. (By Mr. Rissman) Did you yourself go around the plant with these copies of your proposal, asking men to sign?

A. I didn't get the question.

(Question read.)

The Witness: A. I didn't.

Q. (By Mr. Rissman) What other information did you seek, and tell us the sources, with reference to earnings of the company, or wages that should be paid employees on particular jobs?

A. Well, of course, I inquired from different people that I know what different plants in town were paying, the rates.

Q. Did you ever inquire from any public agency or government agency, other than the Income Tax Division of the State of Wisconsin?

A. Well, yes, I did investigate some personal income tax here in Milwaukee, in West Allis.

Q. Did you ever inquire or get any information from any Federal Government diviisons or departments on work being done by The Falk Corporation?

1156 A. No, I did not, only from a few men in the shop, I don't recall just what it was, about certain contracts in Mississippi, for the Mississippi dam, or something like that, down here near Monroe.

Q. Monroe, Wisconsin?

A. Yes. That was in '33, I believe, or '32, or '34.

Q. I am referring now to the period when you were a member of the Works Council.

A. No.

Q. During the time that the other men were obtaining the approval or disaprpoval of your plan among the employees, did any supervising official ever complain to you about it?

A. The first day that the proposal went out, when I gave it, when it was passed to the representatives of the workers, it was passed at noon, and at about 1:00 o'clock or perhaps a little later, Mr. Green came.

Q. What did Mr. Green say?

A. He told me that I was making a grave mistake. I says, "About what?" "Passing those petitions."

"Well," I said, "Mr. Green, those are not petitions. In my opinion, that is merely a letter written to the management, to which I asked the approval of the men who are concerned."

He said, "Well, Mr. Harold Falk don't like it. You had better withdraw it."

1157 I said, "Mr. Green, I am representing men, not management."

Q. Mr. Kinch, will you at this time tell us what you understood to be your duties and obligations as a representative of the men on the Works Council?

A. To hear complaints of the workers, and try to correct them.

Q. And what is your obligation or duty to the men, as you understand it, or as you did understand it at that time, with reference to your consultation with them on any matters that you thought were of interest to the workers?

A. Well, that complaint came to me, I went out to investigate it, and if it would require any attention, I brought it up before the Council. If it didn't, I just told the men, "Well, nothing to it."

Q. After you told Mr. Green that you were working for the interests of the men, and not the company, was there any further conversation between you?

A. No, he left, and about an hour later, he came back and told me that Mr. Harold Falk wanted to see me.

Q. Did you go to see Mr. Falk?

A. Yes, I went to see him immediately.

Q. What conversation was had between you then?

Trial Examiner Batten: When was the date of this conversation with Mr. Falk?

1158 Q. (By Mr. Rissman) Do you recall the date?

A. That was the first part of October, around the—I had the date in mind, but I don't know exactly. I made a note of it.

Trial Examiner Batten: Well, that is close enough.

The Witness: The first part of October.

Q. (By Mr. Rissman) The month of October?

A. Yes, about the 5th or 6th.

Q. That is the first meeting?

A. Yes.

Q. We are talking now about the meeting with Mr. Falk, when Mr. Green came to you and said Mr. Falk didn't like what you had done.

A. That was it.

Mr. Engelhard: Just a minute.

Q. (By Mr. Engelhard) You testified October 10th, about October 10th was the time you had this conversation with Mr. Falk?

A. Well, I had several. That was perhaps on—the first meeting that I had with Mr. Harold Falk was on Monday, I don't recall just what date, but it was Monday, and a date was made for the following day by Mr. Herman Falk.

Q. (By Mr. Rissman) We are now talking about the time later than that, when you have testified the men were

giving their approval or disapproval of your plan by signatures, and Mr. Green came to you and said some-
1159 thing to you about it being improper for you to circulate a petition.

A. Yes.

Q. When was that, what date was that, approximately? How long after your first meeting with Mr. Falk?

A. It wasn't very long, I guess. I don't know. It might be two or three weeks.

Q. That's right. So it would be sometime near the end of October?

A. Somewhere around there. I made a note of it, but I can't recall the date, that being six or seven months ago,—six months ago.

Q. At that time, in the latter part of October, you say about an hour later someone told you to go and see Mr. Falk?

A. Yes.

Q. Did you see him?

A. Yes.

Q. What conversation was had between you at that time?

A. The very words that I used as I entered, I said to Mr. Falk, "Do you want to see me, Mr. Falk?" He says, "yes." Then he nodded his head, he said, "I don't like it a damn bit, that petition you are passing around."

I said, "What is there about it that you don't like?"

"Well," he said, "I don't like it."

"Well," I said, did you see it?"

1160 "Yes, I read part of it."

"Well," I said, "what don't you like about it?"

"Well," he said, "I don't like that last paragraph, especially."

I said, "Well then, you did read it all the way through."

Q. (By Mr. Lamfrom) You said that?

A. Yes. I said, "Mr. Falk," I says, "I am representing men. I can't help it you don't like it, but I believe, if you read it over again, that it is not so bad as it seems at first. Have you got a copy of it?"

He says, "No."

"Well," I says, "where did you see it?"

"Some of the fellows showed it to me," he says.

"Well," I said, "I will leave you a copy on my way home, and you read it over, and if there is any objection, why," I says, "that could be discussed at the meeting, and straightened out."

Q. (By Mr. Rissman) What meeting did you refer to?
A. The Council meeting, which was the proper place to present it.
Q. Did you leave a copy with Mr. Falk?
A. I did that evening, on my way home.
Q. Was the proposal ever brought up at the Works Council meeting?
A. It was.
1161 Q. Subsequent to this date?
A. Yes.
Q. Was there discussion on it?
A. Yes, quite a bit.
Q. Was there a vote taken on it?
A. I wanted to take a vote on it, but Mr. Chairman wanted to refer it to the Fact-Finding Committee.
Q. (By Trial Examiner Batten) Who was the chairman?
A. Mr. Green.
I told Mr. Green that the Fact-Finding Committee had been abolished, and I didn't think they could take it up again. He said it wasn't. I looked at the minutes. I don't recall the date, I did have it then, I said, "Refer to the minutes," and they looked it over and found I was right.
Then he says, "I don't see anything to be gained with this." He said, "I take it, if you fellows want to get anything, you should ask for a raise."
Q. (By Mr. Rissman) Mr. Green said it?
A. Yes. I said, "We did ask for a raise," and I said, "It didn't meet with approval. Somebody promised they wouldn't ask for a raise this year."
Q. What was done with reference to the proposal at the Works Council meeting?
A. Well, it was submitted to the—that is, we were told it would be submitted to Mr. Falk for his consideration,
1162 and he was to reply, make a reply to it, and it would be then put in the record, with his reply.
Q. Was that done?
A. It was.
Q. When was it done, approximately?
A. In the December meeting, I believe. I am not sure whether it was the December meeting, I believe it was, though, the December meeting.
Q. Wasn't that November that this discussion took place?
A. Yes.
Q. And the reply came out when? In December?

Mr. Engelhard: You have already produced the proposal.

Mr. Rissman: Is that in evidence?

Mr. Engelhard: Yes, that is in evidence, the proposal and the reply, and I believe also a copy of the minutes of the December meeting, of December 10th.

The Witness: Yes.

Mr. Rissman: The December mintues?

Mr. Engelhard: The December minutes.

Mr. Risman: I remember introducing the minutes, but I don't know whether it was November or December.

Mr. Engelhard: December 10th.

Q. (By Mr. Rissman) Just tell us generally what the reply was, was it acceptance, or denial, or was it partial acceptance, or partial denial?

1163 Mr. Lamfrom: It is in here.

Trial Examiner Batten: It is Exhibit 24.

Mr. Lamfrom: It is in here. It is the best evidence.

Trial Examiner Batten: Exhibit 24.

The Witness: There was one objection that I had to the minutes.

Q. (By Mr. Rissman) What objection did you have to the minutes?

A. There was a statement made misquoting me in the debate that we had in the office with Mr. Herman Falk and Harold Falk. I made a statement to them—

Mr. Engelhard: Just a minute.

Q. (By Mr. Engelhard) Do you refer to the minutes, Mr. Kinch, a statement in the minutes?

A. The report of the meeting, the minutes, yes.

Q. Have you read the minutes of December 10th?

A. Of course I have.

Mr. Engelhard: Suppose you show him a copy, and see whether there is.

Q. (By Mr. Rissman) You say you recall now, or knew at the time you read it, that there was a misstatement in the minutes?

A. I called that to their attention.

Q. I hand you herewith Board's Exhibit No. 24, and you if those are the minutes you refer to?

1164 A. Yes.

Q. And you state that in those minutes there is an error, or a misquotation?

A. Yes. This misquotation was not accusing me directly. I merely stated at this meeting that I believed that was di-

rected at me, and I wanted to make a correction. If it wasn't me, it was okay.

Q. You mean this is what you said at the meeting, or do you want the correction now?

A. I wanted to correct that at this meeting, this paragraph here, the first part of the paragraph.

Q. (By Mr. Engelhard) Are you referring to the minutes, or are you referring to Mr. Harold Falk's reply to your proposal?

A. To Mr. Harold Falk's reply to my proposal.

Mr. Engelhard: Then the record will show that is what he is talking about, not the minutes of the meeting.

Q. (By Mr. Engelhard) You were saying the minutes of the meeting were not correct?

A. This is about my proposal.

Q. Do you know what is meant by "Minutes of meeting"?

A. Yes.

Q. That is this sheet here, isn't it?

A. Yes.

Q. Is there anything incorrect in the minutes of the 1165 meeting?

A. Isn't that included?

Q. Is there anything incorrect in the minutes of the meeting?

A. No.

Q. (By Mr. Riseman) The minutes of the meeting of December 10, 1936, marked Board's Exhibit 24, include, as part of those minutes, the proposal and the reply of the company, do they not?

A. Yes.

Q. And in the reply of the company, you state that there is a misquotation?

A. Yes.

Mr. Lamfrom: Well, what is it?

Q. (By Mr. Rissman) Tell us about it.

Q. (By Mr. Engelhard) Will you read the quotation that you say is wrong?

A. "One of the Council representatives made a statement that our men could easily do 30 per cent more work than they are doing."

Q. (By Trial Examiner Batten) What is incorrect about the statement?

A. The statement I really made was this, that if the fear was lifted from over the men's heads and replaced with

proper incentive, I told them that production would be
1166 increased 30 percent.

Q. (By Mr. Rissman) What fear?

A. The fear of a man losing his job, the dissension caused by unequality of wage.

Q. Then the statement as it appears in this reply was not the same as you made it?

A. No. It does not refer to me there, but I assume that it does.

Q. Did any other Council representative at the meeting state the men could easily do 30 percent more than they are now doing?

A. No, not to my knowledge.

Q. Following action by the Council on this proposal, did you ever have any further conversation with Mr. Falk, or Mr. Green relating to this proposal?

A. Not to the day I was discharged.

Q. What happened on the day of your discharge, tell us what it was?

A. About 11:30, or perhaps twenty minutes to 12:00, Mr. Dukas—

Q. What date?

Trial Examiner Batten: What date?

The Witness: A. On December 31st.

Q. (By Mr. Rissman) 1936?

A. Yes. The foreman, Mr. Dukas, we called him, I
1167 don't know how he spells his name, he came to me and told me that Mr. Harold Falk wanted to see me. I says to him, "Again?" He says, "Yes, you had better go."

When I got there, Mr. Connell was seated with him in the office, and as I sat down, Mr. Harold Falk looked at me, he said, "Well, what do you think of your proposition now?"

I said, "Mr. Falk, what are you referring to?"

"Oh, your proposition that you made, your classification proposition."

I says, "Mr. Falk, that was not my proposition."

"Well, whose was it?"

I said, "The men's proposition, they signed it, they okayed it. I merely carried out their wishes, that's all."

Then he began to tell me something about different firms that he wrote to, about the wage, and so forth.

Q. (By Mr. Lamfrom) That he wrote, or you wrote?

A. That he wrote. I says, "Mr. Falk, I am not interested. That has been already threshed out. You have got me here for some other purpose than that."

Then he told me that he thought the company would be best served if my connection was terminated. From the question that he put to me, there was no use for me to do any pleading.

I said, "Well, have you got my check ready?"

1168 He said, "Yes, here it is."

I rased from my seat, shook hands with both him and Mr. Connell and bade them goodbye, and that was all.

Q. (By Mr. Rissman) Mr. Kinch, if the Falk Corporation were to offer you reinstatement to your former position, would you accept it?

A. Yes.

Q. Do you know any reason why you cannot perform the duties you performed as an erection man in the plan if the company were to reinstate you?

A. None that I know of.

Q. I hand you herewith Board's Exhibit No. 30 for identification, being the minutes of the thirty-third meeting of The Falk Corporation Works Council, meeting held on April 9, 1936, and direct your attention to the quotation, being the last paragraph on page 2 thereof, and ask you if you ever had any discussion with the secretary of the Works Council regarding those minutes?

Mr. Engelhard: Will you give me the date of those minutes again?

Mr. Rissman: April 9, 1936.

The Witness: A. Yes.

Q. (By Mr. Rissman) What discussion did you have with Mr. Hydar, the secretary of the Works Council, about this?

Trial Examiner Batten: What is the paragraph? Will

1169 you read that?

Mr. Rissman: The paragraph reads as follows:

"An adjustment upward of about 5 percent in the incomes of employees"—I had better read the preceding paragraph: "Mr. Connell announced that the company declined the proposition for such vacations."

There had been discussion about vacations.

"But offered instead the following: 'An adjustment upward of about 5 per cent in the incomes of employees. Approximately half of this adjustment would take the form of about a 2½ percent increase in the existing wage rates, this to be effective as of April 16. The balance to be paid in the form of a 3 percent bonus on each employee's gross earnings between the period March 1, 1936, and November 30, 1936. This bonus would be paid to the employees on December 23rd."

Mr. Engelhard: Mr. Rissman, I do not find that other date of April 9, 19396.

Mr. Rissman: I beg your pardon. It is a special meeting of April 16, 19396.

Mr. Engelhard: Just a minute. See if I can get this. I have it now. What are you referring to?

Mr. Rissman: Page 2.

Q. (By Mr. Rissman) Now, tell us about your con-
1170 versation with the secretary of the Works Council regarding that paragraph.

A. I told Mr. Hydar that I had been approached by quite a few monthly salary men as to the status of their eligibility to the bonus.

Q. What had the monthly salaried men said to you about their eligibility for the bonus?

A. They were told that it was impossible, that they are not eligible to it.

Mr. Engelhard: Will you read the answer?

(Answer read.)

Q. (By Mr. Rissman.) Who told them, did they say?

A. Mr. Hydar.

Q. And what did Mr. Hydar say to you when you raised this question at the Works Council meeting?

A. I asked him to produce the minutes of April 16th, and read that particular paragraph, see what the representatives of the council told him was their interpretation, which he did.

Q. And he read you this same paragraph?

A. This same paragraph. I asked the Works Council then what was their opinion, what was their interpretation of it. Well, they all admitted it was Falk employees.

Q. What was Mr. Hydar's interpretation, if he had one?

1171 A. He admitted that is what it meant, Falk employees, but—

Q. Did you ask him, or did he state why he told the monthly salary employees that they would not be eligible for the bonus?

A. Yes, I did.

Q. What did he say?

A. He said, "While it reads in the minutes and appears in the minutes that it includes all Falk employees, it was not understood that way."

Q. What did he say was understood?

A. It was understood at the meeting that the monthly men, or monthly salaried men, was not included in this bonus. As a matter of fact, he says—Mr. Green, I believe, said this, made this statement, "They are not represented in the Council."

Q. Was that Mr. Green's contention for the exclusion of monthly salaried men from the bonus?

A. Yes.

Q. What other conversation took place with reference to the same subject?

A. Then I asked Mr. Kirsch, who was one of the members of the Council.

Q. An employee member?

A. He was a member representing employees.

1172 Q. That is what I mean. Go ahead.

A. I asked Mr. Kirsch how long he had been on the Council. He said about three years. Then I asked him, "Who do you represent?", and he enumerated different departments, including power house.

I then asked Mr. Chairman if power house men was to be paid by the month, or by the week. He says by the month.

Q. Will you tell use, Mr. Kinch, if all employees, including monthly salaried employees, were then paid the bonus?

A. These gentlemen were complaining to me that way. I don't know. I didn't ask whether they were or not.

Q. Did yo uever hear that they were excluded from the bonus after this meeting?

A. No, I didn't. Everybody came—a number of them came to me and thanked me for my trouble, to help them in getting this bonus.

Q. I hand you herewith a two-page document, marked Board's Exhibit No. 31 for identification.

Trial Examiner Batten:: You haven't offered that other one yet.

Mr. Rissman: I offer BOARD'S EXHIBIT NO. 30.

Trial Examiner Batten: If there is no objection, it will be received.

(No response.)

1173 (Thereupon, the document above referred to, marked BOARD'S EXHIBIT NO. 30, was received in evidence.)

Mr. Lamfrom: Let me see 30, please.

Mr. Rissman: Any objection to Exhibit 30, Mr. Lamfrom?

Mr. Lamfrom: No.

Q. (By Mr. Rissman) I hand you herewith Board's Exhibit 31 for identification, a two-page document entitled "An Important Message," and ask you if you can tell us what that is, and where you first saw it, or obtained it.

A. This was distributed through the shop.

Q. Speak louder.

A. This was distributed through the shop.

Q. And you received a copy of it while you were an employee?

A. Yes.

Q. Is that the one you received?

A. Yes.

Q. Or one like it?

A. No, this is the very one.

Q. Will you tell us briefly what it is, what information it contains?

Mr. Engelhard: Before you answer that, let me see it, let's see what it is.

Mr. Rissman: Sure.

1174 Mr. Lamfrom: Let me see it.

Q. (By Mr. Rissman) Will you tell us what it is, Mr. Kinch, in a general way, tell us what information it contains?

A. As far as I understand—

Mr. Lamfrom: I submit the document speaks for itself, Mr. Examiner.

Mr. Rissman: Just to identify it, so whoever goes through doesn't have to go into it in detail.

Trial Examiner Batten: You identified it, as far as the contents are concerned.

Mr. Engelhard: Can you identify it, Mr. Rissman, in the record?

Mr. Rissman: Yes.

Mr. Lamfrom: Give the heading and a few succinct descriptions of it. Don't give your views on the philosophy of it, though.

Mr. Rissman: Those are self-expressed. This is entitled, "An important Message", and was passed to the employees, stating the company's oppisition to two labor Disputes Bills, the Severson Bill, in the Senate, referring to the Wisconsin Senate, and the Sigman Bill in the Senate, stating also the reasons—

Mr. Lamfrom: Just a minute. The rest is there.

Mr. Rissman: (Continuing) —the reasons for the
1175 company's objections, and urging the employees to write their senators and assemblymen; and page 2 contains a list of senators in the State Legislature and a list of assemblymen in the State Legislature.

Q. (By Mr. Rissman) Will you tell us, Mr. Kinch, what the Severson bill and the Sigman bill were, if you know?

Mr. Lamfrom: Oh, Kinch is a wonderful accountant, a fine organizer, an excellent and esteemable gentleman, but he has not yet qualified to expound the law here.

The Witness: Correct.

Mr. Lamfrom: Is that right?

The Witness: Yes.

Trial Examiner Batten: I think we know what that law is about, and what it was supposed to do or not do, but I think this witness should testify where he got it, and how he got it. That has some importance.

Mr, Lamfrom: That's right.

Q. (By Mr. Rissman) Will you tell us how you got this document?

A. It was passed to every man in the shop.

Q. And it is signed by Harold S. Falk, Works Manager?

A. Yes.

Mr. Engelhard: Is the date given there?

Mr. Rissman: It is not on the document.

Q. (By Mr. Rissman) Do you recall approximately
1176 when this was passed around?

A. Oh, I would say a week or two before that bill was ready to be debated in Madison.

Q. (By Mr. Lamfrom) That would be about what month?

A. That was in—I really don't know.

Q. About March?

Mr. Rissman: No.

The Witness: A. Well, I don't know.

Q. (By Trial Examiner Batten) Where were you when you received this exhibit 31?

A. In the shop.

Q. Were you working at your machine?

A. No, at the bench.

Q. And who gave this document to you?

A. The timekeeper.

Q. What is the timekeeper's name, do you know?

A. Freddie Hahn, I believe.

Q. Was it during working hours you were handed that?

A. Yes.
Q. Was anything said to you at the time it was handed you?
A. No.
Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Lamfrom) The Severson bill was up f
1177 discussion in the Legislature in March or April—
Trial Eaminer Batten: Are you going to offer tha
Mr. Rissman: I offer it in evidence.
Trial Examiner Batten: It will be received, there bei no objection.
Mr. Lamfrom: No objection at all.
(Thereupon, the document above referred to, mark BOARD'S EXHIBIT NO. 31, was received in evidence.)
Q. (By Mr. Lamfrom) The Severson bill, as the Wisco sin legislative record which we intend introducing here w show, was up for discussion in March and February and Ap of 1937, is that about right? It was in the Spring of th year?
A. No. There was one before that.
Q. There was one before that?
A. Sure, 1936. Either '36, or '35, now, I don't rememb I believe it was '36.
Q. The Legislature came into session when?
A. I really don't recall it.
Q. The Legislature came into session in January, didn it? I mean, under the laws of the State of Wisconsin? Y are familiar with it?
A. A little bit.
Mr. Rissman: I think we should state for the reco
1178 that the Severson bill and the Sigman bill came twice in the Legislature of the State of Wisconsin. T first time it was not approved, and the second time it was.
Q. (By Mr. Lamfrom) Which Severson bill are you r ferring to? The one that passed recently?
A. No, the one in 1936.
Q. You are referring to the bill which came up in t Legislature in 1936?
A. Well, I don't exactly remember whether it was '36 '35, but I believe it was '36. I was working there then, a this time I wasn't, otherwise I wouldn't have it.

Q. This paper was passed to you, you are sure, while you were working there?

A. Absolutely.

Q. You are positve of that?

A. Absolutely.

Q. You are not positive, of course, whether it refers to the Severson bill, which is now the law, or some other Severson bill which was proposed theretofore?

A. It wasn't told to me, but we all know that bill was up, everybody in the shop knew.

Q. When this was passed to you, did you think there was anything wrong on the part of the company?

Mr. Rissman: I object, asking for a legal conclusion.

Trial Examiner Batten: Wait until he finishes his
1179 question.

Q. (By Mr. Lamfrom) (Continuing) —On the part of the company, to ask their employees to oppose the bill?

A. Yes.

Mr. Rissman: I object to the question.

Trial Examiner Batten: Just a minute, until Mr. Rissman makes his objection.

Mr. Rissman: I object to the question. Mr. Lamfrom has pointed out to us very well that Mr. Kinch is not an authority and cannot pass judgment upon the correctness or incorrectness of the company's action in distributing this information.

Trial Examiner Batten: I think Mr. Kinch, if he feels that he is qualified, may answer the question.

Mr. Lamfrom: Sure, that's all I am asking.

Q. (By Mr. Lamfrom) I am not asking you for your legal opinion on it, but your opinion as an employee of the company, whether there was anything wrong in The Falk Corporation passing this exhibit, as it is not known Board's Exhibit 31, to the employees?

A. I didn't think it was right then, no.

Q. What was wrong about it?

A. Because I think that men should think for themselves. They have some pretty smart fellows working there.

Q. It is your opinion that an employer should never
1180 advise with his employees on matters of joint interest to themselves?

A. That is my opinion, yes.

Q. I thought so, from your testimony heretofore, but I wanted to make sure of it.

Mr. Rissman: You have it.

Q. (By Trial Examiner Batten) Do you make a distinction between those things which an employer might advise with employees about, and those things which he made statements to the employees about?

A. This particular bill in question was very important to the employer—the employee.

Q. My question is, do you make any distinction between things which the employer may advise employees about, and things which he may make definite statements to the employees about?

A. There is a distinction between it, and I take it so.

Q. What distinction?

A. One is suggestion, and one is command.

Q. (By Mr. Rissman) Was this in the nature of advice, or making a suggestion?

Mr. Lamfrom: Just a second.

Q. (By Mr. Lamfrom) Did you consider that when The Falk Corporation handed you this exhibit 31, that that was a command to you to use your influence and activities
1181 to oppose the Severson bill?

A. No, I wouldn't say it was a command, no.

Q. What was this other than an expression of the opinion of The Falk Corporation as to the merits of this bill?

Mr. Rissman: Look it over, Mr. Kinch, read it carefully.

The Witness: A. They state their position very clearly here.

Q. (By Mr. Lamfrom) Yes, their opinion.

A. Yes.

Q. And their opinion as to its effect, is that right?

A. But, in my opinion, there are men that haven't got a full understanding of this.

Q. And you think such men should not be made the recipient of the employer's opinion on those things?

A. Well, I didn't say that.

Q. Is that your thought?

A. I have my own opinion.

Q. No, I mean a man who doesn't understand it, you think should not be advised by the employer, or that the employer should not give his opinion to the employee, is that right?

A. Well, I wouldn't put it quite that strong.

Q. How would you put it, Mr. Kinch? You are pretty good at putting things. Let's have it from you.

A. I wouldn't say that, I am not as good at that,
1182 but to put this view of Mr. Falk in its proper light as respects so many men. There are 1400 men there.

Q. Yes.

A. So many different minds.

Q. Exactly.

A. And what effect it would have on me, and what effect it would have on Mr. Jones would be two different questions, what their thought was. I couldn't say for sure that it can be stated that Mr. Falk meant this, or that Mr. Falk meant that. That speaks for itself, that is for a court to decide.

Q. It is your opinion that it is for the court to decide whether there was anything improper in the distribution of this Exhibit 31 by The Falk Corporation?

A. Yes. I am not sufficiently qualified to pass judgment on that.

Q. But you didn't approve of it?

A. No.

Q. You don't approve of any communications by the employer to the employee concerning the relationship of employee-employer, do you?

A. In some cases I do, and in some cases I don't. It all depends on the employer himself, if the employer has always been with his men on the up-and-up, so to speak, and if it is not absurd. If the man was misled once, it is possible
1183 he could be misled again.

Q. Was The Falk Corporation on the up-and-up with its employees?

A. I take it there is sufficient evidence for the court to decide that. I can't state that.

Q. What is your opinion with reference to that?

Mr. Rissman: I object to asking Mr. Kinch to assume the province of the Trial Examiner and the Board.

Mr. Lamfrom: Mr. Kinch is taking a position here which I think I have a right to inquire into. He takes the position it was wrong to send this document out; that it is all right for an employer to have communication with employees in cases and matters concerning the employment relations if the employer is on the up-and-up, and I am asking him now whether his former employer, The Falk Corporation, which handed out Exhibit 31, and which is charged here with an unfair labor practice, or several of them, was on the up-and-up with its employees.

Mr. Rissman: And I submit that is the question to be de-

cided by the entire Board, whether the several acts which have been proved and will be proved here are in violation of the law, or, as Mr. Lamfrom says, on the up-and-up.

The question of whether The Falk Corporation violated the law is not concerned witn the question of whether they are on the up-and-up in the general sense of the word,
1184 in the relation of themselves to their employees.

Q. (By Trial Examiner Batten.) When you made that statement, Mr. Kinch, what did you mean?

A. If men are told things time and time over again, about losing money, and this thing and that thing, naturally men don't have confidence in what is said, they just feel like—well, they don't know how to take it. It might be true, that might have been sent in good faith; but as far as myself personally was concerned, I didn't think it was the right thing to do.

Q. You mean, you didn't accept it as being sent in good faith?

A. That is exactly what I mean.

Q. (By Mr. Lamfrom.) In other words, you felt that The Falk Corporation, in distributing this Exhibit 31, was not on the up-and-up with its employees?

A. Well, I wouldn't put it that way That question covers a whole lot of territory. I would cover it something like this: That a man not sufficiently familiar with the document, if you may call it so, may interpret that as a command, Mr. Falk said so, and that's that. Others interpreted it, I guess, as I do, that are familiar with it, that are familiar with the employer attitude towards things, towards labor.

Q. Your objection, then, in substance, to this Exhibit 31 is that it might affect some of the workers who are not
1185 familiar with such matters as a command from Mr. Falk to oppose this legislation?

A. That would have influence on some men, yes.

Q. That's about it, isn't it?

A. Well, I would put it somewhere around there, yes.

Q. You feel that an employer has no right to communicate his opinions on legislation affecting the employer and employees, to his employees?

A. I didn't say it, at all.

Q. Well, do you?

A. No.

Q. An employer has such a right?

A. Such a right, yes.

Q. And he is an up-and-up employer if he does that, isn't he?

A. Well, I wouldn't say that, either. It is on his property, and he has a right to do anything he wants on his property, it looks to me like it.

Q. I didn't mean that, and you know I didn't mean that, that he has a right to do anything on his property. What is the use of quibbling? You are a smart man, you said so yourself here.

A. No, I didn't say anything like that.

Q. I am asking you whether you would consider an employer who conveys to an employee, whether or not on
1186 the company property, on company time, or at any other time, the employer's opinion of a piece of legislation affecting employers and employees is on the up-and-up?

A. Are you referring to this?

Q. No, anything.

A. Some are on the up-and-up, some may not be. Are you referring to this situation?

Q. I am referring to the attitude that you seem to take, that an employer has no ethical right to communicate with his employees respecting a labor relation, or some legislation which is pending, which may either be one way or the other.

Mr. Rissman: I object to the question. The witness has not indicated it is unethical. He has indicated that in some instances it may be unethical, and in others it may not be, and Mr. Lamfrom is attempting to characterize the witness' testimony with something that is not there at all.

Trial Examiner Batten: I think the previous questions were with respect to this specific case.

Mr. Rissman: Yes.

Trial Examiner Batten: Now, he is asking the witness the same thing generally.

Mr. Lamfrom: To get his attitude.

Trial Examiner Batten: Ask him.

Mr. Lamfrom: Generally.

1187 Trial Examiner Batten: Not only this, but generally speaking, what your feeling is with respect to the employer sending out to his employees a statement of his opinion on a matter which affects the employees and the employer.

The Witness: May I state my reason?

Q. (By Trial Examiner Batten.) You can state anything you want to in answer to it.

Mr. Lamfrom: That is what you are here for.

The Witness: A. The reason I don't approve of it is because it clearly indicates in that document that he don't approve any organization in the plant. That is the way I looked at it, he disapproved of the Severson Act.

My opinion is that, because I knew that Falk Manufacturing, or Falk Corporation, is a member of National Metal Trades Association, and it looks to me unreasonable that one should be organized, and yet a disorganizer, and that letter indicates very clearly to me, categorically, that letter would indicate that he did not want anybody to be organized in that shop, or give them that privilege that they could become organized.

Q. (By Trial Examiner Batten.) I gather from your statements that your opinion is that you are opposed to having an employer send out such things as this, not because it would have any particular influence on you, but that there are in a large plant, oftentimes, a number of men who,
1188 when they receive a document from the employer, assume that that is the thing he wants them to do?

A. Correct.

Q. Is that what you mean?

A. That is exactly the way I thought.

Q. (By Mr. Lamfrom.) And because an employer does that, he may not be on the up-and-up, even though he is expressing his opinion, his honest opinion, with respect to a piece of legislation pending, is that right?

Mr. Rissman: I object to that question. I further object, for the reason that these opinions are not conducive to the facts here, as to whether or not the company violated this Act in the discharge of Mr. Kinch, or anything it did in reference to him.

The Board will determine whether Board's Exhibit 31 constituted such interference with the rights of employees as to be objectionable, and whether Mr. Kinch thinks it is proper or improper is not going to make very much difference with the Board.

Mr. Lamfrom: No, but as a method of influencing—

Mr. Rissman: He has not been called as an expert.

Mr. Lamfrom: Oh, this is a speech. I forgot that. Go ahead. I thought it was merely an objection. Go ahead. Are you through now?

Trial Examiner Batten: Read the question.

1189 (Question read by the reporter.)

Q. (By Trial Examiner Batten.) You may answer

that question. I think we have pursued this thing to about its finish, but you may answer that question. Do you understand the question?

A. Yes.

Q. You may answer it.

A. I think this document, if I may explain it my way—

Q. (By Mr. Lamfrom.) Sure.

A. I think that a man don't necessarily need to be accused of being not on the up-and-up just because of one mistake. A man may be on the up-and-up on one thing, but not on another, whether intentionally or not.

Q. When you took the petition to The Falk Corporation through the Works Council, you thought it was all right, didn't you?

A. In what way?

Q. It was all right for the employees to petition the employer for a change in their wages or working conditions and classification?

A. Yes.

Mr. Rissman: Are you referring to the proposal?

Mr. Lamfrom: Yes.

Q. (By Mr. Lamfrom.) Is it not all right for an employer to, in a sense, petition his employees with respect to
1190 some legislation that is pending?

Mr. Rissman: I object to the question as improper and immaterial, as to what he thinks is right for an employer to do.

Trial Examiner Batten: Read the question.

(Question read.)

Trial Examiner Batten: You mean any legislation—any employer?

Mr. Lamfrom: I will perhaps make it more specific: The legislation which is commented upon in Exhibit 31.

Mr. Rissman: I still object to the question. He has answered that four or five times already.

Trial Examiner Batten: He may answer. Let's get an answer.

Mr. Lamfrom: Then we are through with it.

Q. (By Trial Examiner Batten.) Do you recall the question?

A. No.

Trial Examiner Batten: Will you read the question?

(Question read.)

Q. (By Mr. Lamfrom.) (Continuing) Referring, for example, to Exhibit 31 here.

A. Well, what do you mean, Exhibit 31?

Q. The question is, do you think it is proper for an employer to petition the employees or send out a notice like this with respect to legislation which is pending?

1191 A. He might have sent anything like this. Under the circumstances, I don't think so, no, I don't.

Q. Would you have found any fault if the employees had petitioned the Falk Company to support the Severson bill?

Mr. Rissman: I object to the question. It did not happen. He is assuming something which probably never would happen.

Mr. Lamfrom: I am just getting at the attitude of this witness.

Trial Examiner Batten: He may answer the question.

Mr. Lamfrom: He has told us what he is. I am not quite sure what he is.

Q. (By Trial Examiner Batten.) The question is, would you have any objection if the employees were to petition the Falk Company to support this bill, do you see anything wrong with that?

A. Why, no, I don't see any wrong. A man would do just like I did, a man who doesn't approve of it, just like I would.

Q. (By Mr. Lamfrom.) I don't think you quite get that. In your opinion, would there have been anything wrong if the employees of The Falk Corporation had petitioned The Falk Corporation to support the Severson bill?

Mr. Rissman: I object to the question, unless it is shown that Mr. Kinch has an opinion on something of that

1192 nature. The relationship is entirely different, it is the reverse position. The employer is never known, in an unorganized plant, to feel that anything expressed by the employees is in the nature of a comment, and, as Mr. Kinch has said, the employees will feel the statement of the employer is in the nature of a demand.

Q. (By Trial Examiner Batten.) Do you understand the question?

A. I understand the quetsion; but there is such a vast difference between the intelligence of the two groups that really I don't know how to answer.

Trial Examiner Batten: Well, if you can't answer.

Mr. Lamfrom: That's all there is to it.

Q. (By Mr. Lamfrom.) And you base it on the intelligence of the groups?

A. Yes. One is unintelligent and influenced.

Q. You weren't influenced by the talk?

A. I wasn't, no.
Q. How old a man are you, Mr. Kinch?
A. Fifty-two.
Q. Married?
A. No.
Q. You live in Florida now, don't you?
A. I lived in Florida since.
Q. Do you have a home down there?
1193 A. No.

Mr. Engelhard: I didn't get that last part of the answer. I didn't get the answer as to how long he has been living in Florida.

Mr. Rissman: That question was not asked.

Mr. Engelhard: I couldn't get what was said.

Q. (By Mr. Lamfrom.) What are you doing in Florida?

Mr. Rissman: I object to that question; entirely immaterial.

Trial Examiner Batten: I think it is quite material here whether this man was gainfully employed from the time he was discharged down to today, because the law specifically states that anything this man has earned between December 31, 1936, and today, is deductible from any amounts which the employer might, under the law, have to pay.

Mr. Rissman: I have no objection to Mr. Lamfrom asking Mr. Kinch if he is employed, and where he has been employed.

Mr. Engelhard: He may have been employing himself.

Q. (By Mr. Lamfrom.) What are you doing in Florida?
A. Fishing and gardening.
Q. For yourself? Fishing, of course, I understand you are not a professional fisherman, but I mean the garden, what are you doing about the garden?
A. I stop there with a friend of mine, and he has plenty of ground there, and he raises a few beans, a few pota-
1194 toes, a few tomatoes, and quite a few fish that I know you would like to have on the line.
Q. Are you working for pay for anybody?
A. No, sir.
Q. Just living with this friend?
A. With the friend.
Q. Paying no board?
A. No, sir,—well, I pay some. I pay my own, my own way.
Q. But you are not earning any money?
A. No.

Q. And haven't been?

A. I am not earning any money since I left the corporation.

Q. You came up here in response to a letter from the National Labor Relations Board to testify in this case?

A. No, I didn't. I was here when the letter was sent to me.

Q. You knew about the time this hearing was coming on?

A. I didn't know it through the Labor Board, no, I knew it through the press, clippings were sent to me.

Q. Have you returned permanently to this part of the country now?

A. Well, if the case is in my favor, it will be permanently. If not, I will look for a job.

Q. You never asked The Falk Corporation, to rein-
1195 state you, did you?

A. I hardly could, after what Mr. Falk told me.

Q. After your discharge, you never spoke to Mr. Falk or anybody connected with The Falk Corporation with reference to any reinstatement?

A. To the Board.

Q. When you left Mr. Falk, he gave you the check, you took it, you said, "everything is all right," didn't you?

A. Yes, sir.

Q. No hard feelings?

A. No hard feelings.

Q. I don't know, of course, I can't read your mind.

You spoke of having investigated some other income tax returns besides the returns of The Falk Corporation. Whose were they, or theirs?

A. Some officials of the company. Do you want me to enumerate them?

Q. Sure.

A. Mr. Herman Falk, Mr. Harold Falk, Mr. Connell, Mr. Green, Mr. Simonson.

Q. (By Mr. Rissman.) Who is the last person?

A. Simonson.

Mr. Lamfrom: Yes.

Q. (By Mr. Lamfrom.) We know that Herman Falk is president, and Harold Falk is vice-president, and Mr.
1196 Connell is a vice-president.

A. And comptroller.

Q. And who are the others?

A. Simonson is an official of the foundry, I believe.

Q. At the time that you talked over the proposed classifications with Mr. Herman Falk and Mr. Harold Falk, you told him that you had looked into the income tax returns of the company, I believe?

A. No, I told him that—I don't know exactly what terms, but what I did mean was, I had the same facilities at my disposition as anybody, because I knew you could examine those things.

Q. That was a privilege that you had.

A. Privilege, yes.

Q. And you availed yourself of that?

A. I availed myself of it.

Q. For the purpose of getting information which would reflect upon the earnings of the company?

A. No.

Q. Well, what did you get the income for?

A. I got those figures for the purpose to get this proposition that I was working on, to see for myself if production could be increased, and earnings could be increased; because, after all, money has to be earned before the men could earn more money.

1197 Q. Yes.

A. And I know, through my seven years there, that many things could be improved and production could be increased if a certain system and certain things were done, and if they were losing money, there wasn't a bit of use to take up a lot of time at the machine to ask for a raise and ask for this and ask for that.

Mr. Falk has been broadcasting ever since I had been there about losing money, so I thought I would see for myself.

Q. Were there any years for which the income tax returns you looked into showed they had lost money for such years?

A. Yes, there were a few years they didn't make any.

Q. You are pretty thoroughly familiar with it at that time. What were the years they lost money?

A. I don't recollect. I was more interested, to tell you the truth, what they were doing at that particular time, more than I was in anything else, because that was the time I was making my proposal.

Q. You were interested in the earnings at or about the time you were making your proposal?

A. Yes.

Q. What did you find with respect to those earnings?

A. Just the year before, you know. I found that th made pretty good money in 1935.

Q. Did Harold Falk ever make a statement to y 1198 that they lost money in 1935?

A. Mr. Herman said that they have not made a money since 1929.

Q. I am now asking you about Harold Falk; did he ev make any such statement to you?

A. He made a statement when he first called me in t office that they lost $18,000.00 last month.

Q. When he said they lost $18,000.00 last month, he didn make any statement that the company lost money in 1935, d he?

A. Well, I couldn't help that. I didn't ask him, I kn that.

Q. But I mean, you say they were going around and cre ing the impression that the company was losing money?

A. I said Mr. Herman Falk.

Q. Did Mr. Herman Falk get around the plant, so that could talk to the men, and give that impression?

A. That is what I always did hear around the shop.

Q. What did you hear around the shop?

A. That he is losing money, and I asked the fellow, "H do you know?" He said, "He has been talking that all life, ever since I have known him."

Q. Who said that?

A. One of the fellows.

Q. And you made no inquiry from anybody else wh 1199 those statements were brought to you, did you?

A. That was a common thing, that was a gene thing. I didn't really take notice who said it, it was just g eral gossip around the shop, as you see it, hear it.

Q. Harold Falk never gave you any reason to believe th the company was losing money, outside of that one stateme that they lost $18,000.00 the previous month?

A. Yes.

Q. That's all he ever said, wasn't it?

A. That's all he said, but Mr. Pritzloff at different me ings mentioned losing all this money, and everything.

Q. Who mentioned it?

A. Mr. Pritzloff.

Q. Who is he?

A. He is superintendent of the foundry.

Q. He stated that the company was losing money all t time?

A. Yes, an average of $25,000.00 a month in the foundry.

Q. Anybody who was interested in whether The Falk Corporation was making any money or not could have ascertained something about it by doing the same thing you did, could have consulted the income tax reports, is that right?

A. Well, that is the best way.

Q. So the question whether they were making any money or not was largely a matter of tax records?

1200 A. Yes, what that was; but, of course, I wanted to secure it for myself, because when you are submitting any proposition, you can't submit it unless you know something about it.

Q. When did you first get the idea of these classifications in your mind?

A. About a week after I was elected to the Council.

Q. Had you considered them before you were elected to the Council?

A. It was from my experience of seven years that led me to think about it.

Q. You had some thoughts about it when you were elected to the Council?

A. Of course, I see so many improvements that could be made, and I see so much improvement that could be made in the relation between the men and the management. After all, they were engaged in a common cause, and the better their relation, the better the chances are to make profit, and to make money for the company and for them.

Q. You had been giving that subject some thought?

A. Of course I had.

Q. Before you were elected to the Council?

A. Sure I had.

Q. Well, when you were elected to the Council, you began to shape your ideas into a concrete proposition?

A. Yes.

1201 Q. And you did that in writing form, did you?

A. No. I made several copies of what I thought was correct, to get this fellow's views, and that fellow's views; after all, they are the ones that have to live up to it.

Q. When did you first take up your proposition which you had committed to writing with any other of the employees?

A. Oh, I believe it was a few days after Mr. Falk's talk. Of course, I had made inquiry about different things from the men here and there, that is when I first put it up to any employee about what I had in mind, was after Mr. Falk spoke to me.

Q. Did you, during working hours, prior to your speaking to Mr. Falk, go around and talk to the various employees about wages, hours, and other matters of classification?

A. Never.

Q. You never left your work at all?

A. Never; unless somebody came to me and made a complaint, after I was on the Council.

Q. Yes, that is what I am talking about.

A. And made a complaint. A man would come to me and says, "So-and-so and so-and-so." Well, I didn't take his word. I trust everybody in the shop, but I investigate things first before I give my decision, because if I thought a matter was to be brought up before the Council, I did so, if not, I would go back to the man and tell him.

1202 Q. Before you saw Mr. Falk, then, you had not circulated any papers or petitions among any of the men?

A. No.

Q. Do you know how Mr. Falk got to learn of the fact that you were preparing a classification? Did he say to you?

A. I told him that I had been working on one.

Q. That was the occasion for his calling you in the first time, wasn't it, that he heard you had some classification?

A. No.

Q. What was the occasion?

A. He called me—let's see. I don't know exactly what date that was when Mr. Falk first called me in. That was in October, I believe, the 10th, something like that, I don't know exactly what date, but it was the following day when Mr. Herman Falk and Harold Falk was in the office together that I made my proposition then.

Q. But you testified, I believe, that Mr. Green, or somebody, came to you and said Mr. Harold Falk wanted to see you?

A. Yes.

Q. That was the first time?

A. Yes.

Q. And you went to see him?

A. Yes.

Q. At that time, did you have the written proposal ready?

A. Yes. That was already in the hands of several

1203 representatives.

Q. Of the Council?

A. Yes.

Q. Did you give it any wider circulation than members of the Council?

A. No.

Q. And Mr. Falk either had a copy of it, or had seen it?

A. How he got it I don't know.

Mr. Rissman: Are you referring to the first meeting with Mr. Falk?

Mr. Lamfrom: The first meeting, yes.

Mr. Rissman: I think that ought to be made clear in the witness' mind. Mr. Green didn't call him to attend that meeting.

Mr. Lamfrom: Who called him? Let's hear that.

Q. (By Mr. Lamfrom) Who called you to Mr. Falk's office the first time?

A. The first time was Mr. Henderson.

Q. Hendyson?

A. Henderson?

Q. Who is he out there?

A. He is superintendent of the erecting shop.

Q. Where you were working?

A. Yes.

Q. When you went to see Mr. Falk at that time, did 1204 you have with you a copy of that proposal?

A. No, I only had it in my mind; I just thought of it in a general way.

Q. But you had already written it out?

A. No,

Q. Oh, it wasn't written out at all?

A. No, I just had an idea.

Q. I thought you had already given some copies of that to the members of the Works Council?

A. That was following.

Q. Following what?

A. Following this conversation I had.

Q. How long after that?

A. I don't know exactly. I have the record.

Q. Look it up. You have got an extensive memorandum there?

A. Yes.

Q. Look up the date on which you first gave that petition to the members of the Works Council. Go ahead, look it up.

Mr. Rissman: I will give him his memorandum.

Mr. Lamfrom: Oh, you have his memorandum there? It was in good hands in the meantime, I am sure.

Trial Examiner Batten: We will adjourn until 2:00 o'clock. He propably can locate it by that time.

(Thereupon, a recess was taken until 2:00 o'clock p. m.)

1205 After recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 2:00 o'clock p. m.)

Trial Examiner Batten: Is Mr. Goldberg here?

(Discussion outside the record.)

Trial Examiner Batten: We have Mr. Goldberg's permission to proceed if he is not here.

ANTON KINCH, a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Cross-Examination (Continued).

Mr. Lamfrom: What is the last question and answer?

(Record read by the reporter.)

The Witness: Do you mean Works Council representative of the Workers, or represented at the meeting?

Q. (By Mr. Lamfrom) The firts date that you distributed that petition to the members of the Works Council.

A. At noon, October 26th.

Q. Who are some of the members of the Works Council to whom you distributed it?

A. I think Mr. Kirsch was one, and Mr. John Wolf was another, and I believe Mr. Adamski.

Q. Any others?

1206 A. All of them wasn't present.

Q. What?

A. All of them wasn't present.

Q. What do you mean, present?

A. At noon. This was sort of an impromptu meeting.

Q. Oh, you had a little gathering?

A. Yes.

Q. You call it a gathering?

A. Yes.

Q. All of them were not present?

A. No.

Q. But Adamski, Kirsch, and this other gentleman?

A. Mr. John Wolf.

Q. They were present?

A. Yes, I think they were the only three. I am not sure who else was there.

Q. You had a talk with them?

A. Yes, and—

Q. Well, you said "yes". That's all I am asking. And what was the talk?

A. I explained what the proposition was, and to take it and explain it to the men at noontime and get their opinion on it.

Q. Explain it to what men?

A. The men that they were representing in the organization.

1207 Q. Did Adamski and Kirsch and Wolf represent different divisions of the men—

A. Yes.

Q. (Continuing) —in the plant?

A. Yes.

Q. That was October 10th?

A. October 26th.

Q. The 26th, excuse me. When was the date that you were asked to come in and see Mr. Falk?

A. On the same day.

Q. The same day?

A. With reference to this matter, yes.

Q. That was the second time that you had been called in to see Mr. Falk within a comparatively short period?

A. Yes.

Q. And was Mr. Connell present at this meeting that you had with Mr. Falk?

A. No.

Q. Just you and Mr. Falk?

A. When I got in the office, there was somebody there with him, I just can't recall. I believe it was a stenographer, he was dictating some mail, but she went out when I came in.

Q. She went out, and was not present at the time you had the conversation with Mr. Falk?

1208 A. Yes, that's right.

Q. How long after that conversation was the plan submitted to the Works Council?

A. At the following meeting.

Q. And that was when?

A. The second Thursday in November, but I don't know exactly what date, I don't remember that at this time.

Q. Well, about?

A. Well, I would say it was around the 13th, somewhere around there. I don't know exactly. It must be in the copy of the minutes.

Mr. Lamfrom: Where is that copy of the minutes of that Works Council meeting here?

Trial Examiner Batten: Has a copy of the November minutes ever been introduced?

Mr. Rissman: I don't believe so.

Trial Examiner Batten: I don't believe those have been introduced, Mr. Lamfrom.

Mr. Lamfrom: There were some minutes produced, on which occasion.

Trial Examiner Batten: That was the December meeting, the proposal and the reply.

Mr. Lamfrom: Yes.

Trial Examiner Batten: That was Exhibit 24, I believe.

Mr. Lamfrom: Exhibit 24. Well, then let that go 1209 for the time being.

Q. (By Mr. Lamfrom) The number of conversations that you had with Mr. Falk, Harold Falk, up to and including the time that you were discharged, were three?

A. Yes.

Q. Was it Mr. Falk, your first meeting with him, that suggested you reduce the plan you had discussed with him, reduce it to writing?

A. He did.

Q. He suggested that?

A. After I explained it.

Q. Just answer "yes" or "no" if you can. He suggested that?

A. Yes.

Q. Up to that time, you had not put it in writing?

A. I had not.

Q. In any respect whatsoever?

A. No.

Q. You had the information, but had not gotten around to do it?

A. I had memorandums, what I wanted in it, and what I thought ought to be done, but I never had it reduced to writing.

Q. Do you remember that at that meeting with Mr. Falk at which time he suggested you put the matter in writ-
1210 ing, that he said, among other things, if there was anything in the plan worth while, or something to that effect, that he would be glad to discuss it with you?

A. Well, I don't recall him using those words. He always was ready—He did say he was ready to listen to any complaint.

Q. Mr. Falk testified on his examination here that at that meeting, he said to you, Suppose you reduce your plan to writing, and when you have got it in that shape, let's you and I sit down and discuss it. If you have got anything in the plan that is worth talking about, or taking out of it, we can get some benefit out of it and the men can get some benefit out of it, I will be glad to discuss it with you. Did he say that?

A. I didn't understand it that way; but even if he did, I didn't promise I was.

Q. I am not asking you whether you promised. I am asking you whether he said that, or words to that effect.

A. Substantially, yes.

Q. Did you know when you left Mr. Falk's office that day that Mr. Falk expected that you would come back after you had put this matter down in writing, and discuss it with him?

Mr. Rissman: I object. This witness can't know what Mr. Falk expected. He may relate the conversation, or anything that was said.

1211 Trial Examiner Batten: I will sustain the objection. He may repeat what was said there, or whether he felt that there was any appointment, definite or indefinite, made to return.

Q. (By Mr. Lamfrom) Have you any recollection that Mr. Falk said that when you had that plan in writing, that he would discuss it with you?

A. Yes.

Mr. Rissman: I object to that. Let him state the conversation.

Trial Examiner Batten: He has answered the question.

Mr. Lamfrom: He has answered it, yes.

Q. (By Mr. Lamfrom) What did you understand he meant, that when you had the plan set out in writing, that he would discuss it with you?

A. I don't care what he meant. I know.

Q. I know you don't care about that, you have made that so plain heretofore.

Q. (By Trial Examiner Batten) The question is, what did you understand him to mean?

A. I understood him to mean that it was at my discretion whether I wanted to come, he would like to have me come to submit the proposition to him; that is the way I understood it.

Q. (By Mr. Lamfrom) And you didn't want to do
1212 that, did you?

Mr. Rissman: I object to that question.

Mr. Lamfrom: I don't see anything objectionable to that question.

Trial Examiner Batten: I think the witness is qualified to answer that, whether he wanted to or not. I don't know as the question is quite properly worded, but he may answer. I think he is intelligent enough.

The Witness: Can I answer that question in my own way?

Trial Examiner Batten: Yes.

Q. (By Mr. Lamfrom.) That is what you are here for.

A. In face of the fact that there were seven or eight workers representatives, it certainly would look inconsistent to see Mr. Falk separate on any matter that pertained to the business of the Work representatives, that would be kind of a reflection on me.

Aside from that, the workers that I represent would think "that fellow is over there making a deal with them,"—well, you just about could guess what they would say when I went down there alone to see Mr. Falk.

Q. So that, when you left Mr. Falk's office, you had no intention of discussing the matter with him further, after you put it down in writing, had you?

A. Yes, I did.

Mr. Rissman: Just a minute, I object.

1213 The Witness: A. After I seen the men.

Q. (By Mr. Lamfrom.) After you had seen the men?

A. Yes, after I submitted it to them for approval, yes.

Q. You did submit it to the men, didn't you?

A. Yes.

Q. And you did talk to them about it?

A. Yes.

Q. Did you come back to Mr. Falk after that, for the discussion which he asked for?

A. They called for me.

Q. I mean, before the matter was submitted to the Works Council?

A. Of course, I took the proposition to him.

Q. To Mr. Falk?

A. Certainly. On my way home, I left it there.

Q. When was that?

A. The same day that he called me in, on the 26th.

Q. Mr. Falk testified that he saw you twice; that he saw

you at the time you came in to talk with him with reference to your ideas, and at the time he asked you to put it in writing, and then again December 31st, when you were discharged. You have testified here as to another meeting. Are you positive that you talked this matter over twice with Mr. Falk before your discharge?

1214 A. Let's get this correct.

Q. Yes, go ahead, that's all we are after, is to get it correct.

A. Let me get your question right.

Q. Do you want it repeated?

A. Yes.

Mr. Lamfrom: Will you read the question?

(Question read as follows:

"Q. Mr. Falk testified that he saw you twice; that he saw you at the time you came in to talk with him with reference to your ideas, and at the time he asked you to put it in writing, and then again December 31st, when you were discharged. You have testified here as to another meeting.")

The Witness: A. That is correct.

(Record read further as follows:

"Are you positive that you talked this matter over twice with Mr. Falk before your discharge?")

The Witness: A. The first time I talked with him, and the second time I took the papers there, the same day. I told him if I wasn't there, I was going to leave the papers in his office for him to look it over.

Q. (By Mr. Lamfrom.) Well, now, Mr. Kinch, the first time you saw him, you didn't have any papers, did you?

A. The first time I saw Mr. Falk?

1215 Q. Yes.

A. No.

Q. And then the same day you took the papers in to him?

A. First, I mean, when he sent for me before the proposition was ever put into writing.

Q. Yes.

A. That is the first time.

Q. That is the first time. Now, what was the second time?

A. The second time was when the proposition was submitted to the men for their approval, right after, that same day, on the 26th.

Q. The same day that the proposal was submitted to the Works Council?

A. No, to the workers' representatives, when I passed it to them, for them to pass it over to the men.

Q. Let me get this as clearly as I can. What was the first time that you saw Mr. Falk, the approximate date?

A. The first time when I see Mr. Falk was on October 25th,—I mean the 5th.

Q. The 25th?

A. No, the 5th.

Q. And the second time you saw him was?

A. On October 6th.

Q. (By Mr. Rissman.) 26th?

A. No, October 6th. That was the following day.

1216 Q. (By Mr. Lamfrom.) Yes. And then you brought in the proposal in writing?

Mr. Rissman: He has not said so.

Mr. Lamfrom: Now, will you kindly stop it?

Mr. Rissman: Well, you are testifying.

Trial Examiner Batten: Just a minute. This witness is perfectly intelligent.

Mr. Rissman: That's right.

Trial Examiner Batten: If he is left alone, he will straighten it out himself.

Mr. Lamfrom: Sure.

Mr. Rissman: If he is left alone, yes.

Trial Examiner Batten: All right. Then let's leave him alone, and let the witness figure out these meetings and dates. He knows where he met, and when, and who. Let him proceed to figure it out for himself.

Q. (By Trial Examiner Batten.) Now, Mr. Kinch, without any further interruptions from anybody, just relate to us, in a few words, the various meetings you had with Mr. Falk, and the approximate date of those meetings.

Mr. Lamfrom: Respecting—well, you said he shouldn't be interrupted.

The Witness: A. The first meeting was on October 5th.

Q. (By Trial Examiner Batten.) How did you happen to go in on October 5th?

1217 A. Henderson came to me and told me that Mr. Falk wanted to see me.

Q. Who was present at that meeting?

A. Just Mr. Falk himself; and at the time I came there, with him was a bookkeeper, I forget his name.

Q. When was the next time you saw Mr. Falk?

A. The following day.

Q. How did you happen to go in that day?
A. The date was made the day before.
Q. And when you were in conference with Mr. Falk, who was present at that conference?
A. Mr. Herman Falk.
Q. When was the next time that you saw Mr. Falk?
A. On October 26th.
Q. And how did you happen to go in that time?
A. Mr. Green came to see me, I think it was about 1:30, that was the day when I distributed the copies.
Q. When was the next time you saw Mr. Falk?
A. I didn't see him that evening, but I left—
Q. I mean, when was the next time you saw him?
A. When I was discharged.
Q. How did you happen to go in that time?
A. He sent for me.
Q. Who notified you to go in?
A. One of the foremen in the shop.
1218 Q. Who was present at that conversation?
A. Mr. Connell.
Q. And Mr. Falk?
A. Yes.
Q. And yourself?
A. Yes.

Trial Examiner Batten: I don't think there is any question in the witness' mind.

Mr. Famfrom: No, I think he is getting it perfectly clear.

Mr. Rissman: Except what Mr. Lamfrom said.

Trial Examiner Batten: I think this witness is perfectly competent to match wits with Mr. Lamfrom.

Mr. Rissman: We are not here to match wits, Mr. Examiner; we are here to get the facts.

Trial Examiner Batten: I know; but the witness, I think, will take care of himself.

Q. (By Mr. Lamfrom.) I just want to get this situation cleared up. You saw Mr. Falk the first time October 5th, and the second time October 6th?
A. Yes.
Q. And the first time, on October 5th, you didn't have the thoughts of your plan committed to writing, did you?
A. On October 5th, the proposition was not discussed at all.
1219 Q. What was discussed between you and Mr. Falk on October 5th?

A. That was the time he told me they were losing $18,000 a month, or rather, that they lost $18,000 last month.

Q. In other words, you were called in to Mr. Falk's office by—who was it?

A. By Mr. Henderson.

Q. By Mr. Henderson?

A. Yes.

Q. And Mr. Falk said, in effect, "Good morning," or "Good afternoon, Mr. Kinch. The Falk Corporation lost $18,000 last month."

A. No. But that was the substance of it, that was the reason, I guess, among other things, that he talked to me about that "I understood"—or "I was told", rather, "that you had some knowledge of the business, and so forth, and I sent for you. I want to show you something about what is doing."

And I said to Mr. Falk that I was working in the machine shop, I don't think—what do I care about what they was doing in the office.

Q. You were not interested in that?

A. No. My business is in the shop.

Q. Yes.

A. But he says, "You know, you are on the Council, 1220 and it is no more than right that you know our end of it, too."

I said, "That is true, that's all right. I don't mind that."

Q. To get the conversation a litle better, you went in there on October 5th, and you had a conversation with Mr. Falk?

A. Yes.

Q. Who started the conversation?

A. He did.

Q. What did he say, in substance? I don't expect you to repeat his exact words.

A. When I came in there, there was a vacant chair right alongside of him, and Mr.—I forget the name of the bookkeeper.

Q. We don't care about the bookkeeper.

A. We have gone all over this.

Q. I just said, what were Mr. Falk's words, what did he say? I didn't say anything about a chair.

A. He said, "Mr. Kinch, I sent for you for the purpose to acquaint you with some of our business. Won't you sit down?" Which I did.

Q. Yes.

A. The bookkeeper left; and he had what seemed to me at

the time a monthly balance sheet, and he begin to point out different things on it, and I didn't look at it, because
1221 I am not familiar with the office.

Q. That we know. Just stick to the conversation.

A. I said, "Mr. Falk, I work in the shop."

"Well," he said, "you are on the Council, aren't you?"

I said, "Yes."

He said, "Don't you think you ought to know our end, too?"

"Why, sure, that's all right; there is nothing wrong with that."

So he began to tell me about the losses that he sustained last month, and so forth.

Q. And nothing was mentioned about any plan that you had in mind?

A. No, not then.

Q. But at that time, you did have a plan in mind?

A. Yes, roughly, yes.

Q. And that was October 5th?

A. Yes.

Q. And the plan which you had in mind roughly on October 5th, you had in writing on October 6th?

A. No. I didn't mention the plan then on October 5th.

Q. I didn't say anything about mentioning it. On October 5th, you had roughly in your mind a plan?

A. Yes.

Q. Or a classification?

1222 A. Yes.

Q. And on October 6th, you had that plan in writing, and distributed it to some of the members of the Works Council?

A. I didn't say so.

Q. Well, what did you say?

A. I didn't have a plan then. I came there on October 6th. To continue the story, Mr. Falk, it seemed like he had an appointment with somebody in town for lunch or something, or maybe he got nervous at what I said, I don't know, but he said, "By Jove, I have got an appointment downtown for lunch."

Q. Yes, we heard all about that.

A. Okay.

Q. What I am asking you is, when did you first commit your plan to writing?

A. After we had a conference on October 6th.

Q. Oh, on October 6th?

A. Yes.

Q. So then it was on October 6th that you and Mr. Falk first had a discussion of your plan?

A. Yes.

Q. Did you tell him you had a plan, or did he say, "I hear, Mr. Kinch, you have got some kind of a plan for the men." How did that come?

A. No. That came about when he asked me about
1223 the finance corporation—corporation finance, and so forth, and I gave the reason why I was getting that information, why I wrote letters to different corporations that are in competitive business, I want to get their plan.

Q. Let's get ourselves transferred a little back here in the history of this matter. It is now October 6th, you and Mr. Falk were in Mr. Falk's office?

A. Yes.

Q. In the evening, I think that was as you were going home?

A. Yes.

Q. Tell us what you said and what Mr. Falk said, to the best of your recollection. That's all I want to know.

A. As I entered the office, Mr. Herman Falk was there sitting opposite him, and they were discussing something about taxes.

Mr. Herman Falk seemed like he was in a bad humor.

Q. Well, I am not asking you for anything but the conversation, what you said.

A. Well, I am telling you.

Q. But you are talking about bad humor, now.

Q. (By Trial Examiner Batten.) Tell us just what was said there.

A. So as I came in, they were both engaged, Mr. Harold Falk was looking at a paper, they were engaged in some
1224 conversation. Naturally, I had to stop and pause a while. He looked and he said, "Do you want to see me?" I said, "No, I thought you wanted to see me."

"Oh, yes. That's right,' he said, "sit down."

So I seated myself, and then Mr. Herman Falk—I never met Mr. Herman Falk. I had seen him.

Q. (By Mr. Lamfrom.) Oh, sure; but stick to the conversation.

A. And he began to tell about the losses, that is the first thing he started.

Q. Now, let me interrupt you there. Did Mr. Herman Falk, in effect or substance, begin to tell you about the losses The Falk Corporation had?

A. Yes, he used terms something like this:

Q. You had never met Herman Falk before, had you?

Trial Examiner Batten: Just a minute, Mr. Lamfrom, he was just going to start to tell you what Herman Falk said. Proceed.

The Witness: After the discussion ended about the taxes, he said, "Those dog-gone fellows in the shop think we are making all kinds of money, and we have to pay taxes, and things like that," and I just kept still until they got through. When they got through, Mr. Harold Falk said to me again, he said, "What was that we were talking about yester-

1225 day?

"Why," I said, "I don't know. You tried to convince me that you were losing some money."

"Oh, yes, that's right."

Then he proceeded to tell me, and Mr. Herman—they both were talking at the same time, Mr. Herman joined in on this and that. I didn't even listen, to tell you the truth, because I know it was—well, anyway,—

Q. (By Mr. Lamfrom.) Wait a minute. You know it was what?

A. Well, that was their idea. I had my own ideas about it.

Q. But you were going to say something there, then you stopped. You know it was what?

A. I know it was a stage act, if you want to know the truth.

Q. All right. That's all I wanted to get from you on that.

A. When he got through, they continued on and continued on about the losses, until I got finally to the point that my ears began to burn, and I told Mr. Herman Falk that I didn't believe such losses were sustained by the corporation, from all the information that I had, and I thought I had a pretty good report on the corporation finance, to show that the corporation is in very good shape, I didn't see nothing to worry about.

1226 Q. You said that to Herman Falk?

A. Well, they both was together, I was addressing both.

Q. I see. Go ahead.

A. I didn't see why I was concerned about it, why they was telling me all that stuff.

Q. That was part of the stage act?

A. Well, I would say yes, it was a stage act.

Q. All right. Go ahead.

A. I didn't have no money to make up the deficiency, I told him I didn't see anything to it.

Q. They asked you, of course, to make up their deficiency?

A. No, they didn't.

Q. Well, go ahead. Anyway, you were there, they told you about their losses, and you didn't make up their losses. Go ahead.

A. Then I finally told them I came there to deal with this and that, if he is willing to deal with facts, and if not, the conference is ended right now, and I raised from the chair and was ready to go, and Mr. Herman Falk said, "Sit down. We want to do what is right. Just sit down."

I don't know the exact words he used, he is kind of an excitable old fellow, old gentleman.

Q. And you are always perfectly calm and cool?

A. No, I am not, I get excited sometimes. But I seated myself again, and then he began to kind of calm down a
1227 little bit, and I asked him, I said, "You made a statement that you are not making any money. Just what do you mean by that, that you are not making any money?"

"Well," he said, "I mean we are not making any money, and haven't made any money—well, we made a little money in '29."

I said, "What do you call 'a little money?' "

"Well, we haven't made much."

"Well," I said, "on the investment you have in the plant, I think you made pretty good."

He said, "What do you think we made?"

I said, "You made pretty good."

"Well, what do you think we made?", again.

I said, "Well, if my recollection is right, I think you made a little over $900,000.00. Am I right?"

Q. Who did that? Who scratched his head, you or Herman?

A. He scratched his head.

Q. Or did he scratch your head, or did you scratch his?

A. He said, "Yes, I think it is somewhere around there, I don't know exactly. But we never made anything before,

and we never made anything after," and he made me feel like I was accepting charity, and I told him so.

Q. You testified to that, of course, that your feeling was that you were accepting charity, this morning, so now we have got that twice.

1228 A. You have. Okay.

Q. Yes.

A. Then something came up, I don't know how it was brought up, I believe I brought it up myself, I said, "The reason I went to all this trouble was, I want to get things right. I am working on the proposition, and I want to see what your competitors are doing."

Q. Excuse me just a minute. You said you were working on the proposition?

A. Yes; that I was presenting to the Council, that I was figuring to present to the Council.

Q. Is that the first time that question ever came up?

A. Yes.

Q. Let's have the exact words that you used when you mentioned that.

Mr. Rissman: He is giving them to you.

The Witness: Well, I think that is just about the words I used, that I was working on the proposition, which I expected to present to the Council in the very near future for their consideration, and Mr. Herman Falk said, "What is the proposition?" And I told him it was a classification plan.

Q. (By Mr. Lamfrom.) Yes.

A. By which many of the evils that was in the shop could be removed, and help to establish better relations be-

1229 tween the workers and the management.

"Well," he says, "tell me roughly what is in your mind."

"Well, I thought that the men should be classified, and it made known to each other what their hourly rate is, so why hide anything if it is all right."

I said not to hide anything about it, everybody wants to know what the other fellow gets.

"Put on your card what the hourly rate is."

He says he didn't think that would work. He said, "You know, men are very jealous of their hourly rate."

Q. Who said that, Herman or Harold?

A. Herman.

I said, "That is just where you are wrong, Mr. Falk."

I said, "The men are not jealous. I had men come to me

in the shop, that are getting more than the other fellow is getting, and they told me they didn't think it was right." In other words, to make it plain, men, they are who I call pets, that is what they call them over there—

Q. Call them anything you please. I don't know any of them.

A. (Continuing) —was getting more, for some reason, than a fellow that they know themselves was worth more than they were, and they didn't think it was fair. It was really that, that was one of the things that made me to
1230 get this proposition up, to remove that jealousy or suspicion among the men, and establish a better relation between them and the management.

Q. The relation was bad?

A. They were at the time, yes.

Q. Lots of agitation in the shop?

A. Well, I wouldn't say lots of agitation, but when a man hasn't got a clear mind, when he is worried, and full of fear all the time, he can't produce, because, after all, it is not the hands that make the mind move, it is the mind that makes the hands move, and when that condition is there, there is less efficiency.

Q. What was this fear you brought up at that time?

A. Fear about job, fear about the man on one job being placed on another that he is not so good at, that he don't do just what they think ought to be done.

Q. Did the men express that to you?

A. More often than once.

Q. Who were some of the men that expressed that to you?

Trial Examiner Batten: Was this a conversation?

Mr. Lamfrom: No, I am just diverting a little.

Trial Examiner Batten: I don't think we had better get into that realm. Let's get these meetings and conversations straightened out first, Mr. Lamfrom.

Mr. Lamfrom: Of course, the witness has quite an
1231 agile mind, and I believe it is within the province—I am merely suggesting this—of the cross-examiner to take an agile mind like that over quite a broad field as quickly as his mind will work, in order to test his memory and veracity. That's all I am trying to do.

Sure, go ahead, Mr. Rissman.

Mr. Rissman: I think the relation of the conversations and the dates and the details of it is a sufficient test of the witness' memory. The things that prompted him to make certain

statements in this conversation with Mr. Harold Falk and Mr. Herman Falk are not material and necessary at this time, unless Mr. Lamfrom intends to show that they were for some purpose other than the witness states.

Trial Examiner Batten: Mr. Lamfrom, I have no objection to your cross-examining this witness in any way you see fit, except that I do rather definitely feel that the cross-examination should be confined and have some relationship to the matters which were brought out on direct examination, matters which seem to be at issue here.

Mr. Lamfrom: I quite agree with that.

Trial Examiner Batten: I mean, we cannot get too far afield here.

Mr. Lamfrom: I aim not to do it, but I may stray away once in a while. We all do that. So let's drop that for the time being, at least, and go on with your conversation.

1232 Q. (By Mr. Lamfrom.) Do you remember where you left off?

A. I would like to hear it.

Trial Examiner Batten: I think I will caution the witness at this time that, when you are asked questions about conversations, if you will just drop everything else, and simply tell us the conversation as to what you said and what the other man said, you probably will not get to the point where you get afield. Just tell us the conversation, then I think we can probably confine it pretty close.

The Witness: Thank you.

(Record read by the reporter.)

Trial Examiner Batten: I think if you will proceed from the point where you were discussing Herman Falk, you stated they had made about $900,000. Now, proceed from that point on.

Mr. Lamfrom: Yes, I think that is a good place.

Q. (By Trial Examiner Batten.) Tell us what was said at this conference.

A. I didn't want them to [illegible] thing I was getting that information for any other purpose.

Q. Now, Mr. Kinch, I don't want to have to tell you again that we are not concerned about these sidelights, or what you think, about them. What we are concerned about here is what you said to these men, and what they said to you, so, starting in at that point, when you said to Herman Falk, "Didn't
1233 you make about $900,000 in 1929," from that point tell us what was said the rest of the meeting, as you recall it.

A. From then on, I started about this proposition, that I had a proposition in mind, or rather, that I was formulating a proposition to remove some of the evils that, after all, was causing a good deal of dissension among the men, between the management and the men.

He asked me what it was.

Then I told him about the various men getting what I thought was treated pretty fair, and some that wasn't treated fair. In other words, it was favoritism, whereas, I was after to eliminate the favoritism, and make everybody stand on their own feet.

Well, he thought that might be a good idea.

Q. (By Mr. Lamfrom.) Who? Herman?

A. Yes. And he says, "Put that proposition in the form of writing, and let's see how it looks."

Q. Oh, Herman said that?

A. Yes, Herman. Then I said some more.

I didn't say that I wasn't coming back, or that I was, or anything.

Q. That ended the interview?

A. That practically ended the interview.

Q. Harold Falk didn't say to you, "Now, Mr. Kinch, 1234 put these ideas of your in writing, and then come back and we will discuss it?"

A. Well, they were talking together, but Mr. Herman Falk was the first one that mentioned it.

Q. And if it appears here that Mr. Harold Falk said in effect, "Suppose you reduce your plan to writing, and when you have got it in that shape, let's you and I sit down and discuss it"—Mr. Falk testified that way—would you say that Mr. Falk was not testifying to the fact?

Mr. Rissman: I object. What appears in Mr. Falk's testimony, as to his conversation with this witness, cannot be used as a yardstick for the testimony of this witness.

Mr. Lamfrom: I can use anything.

Mr. Rissman: He has testified what his recollection of the situation was, and who he recalled made the statement. If there is any discrepancy, it will be apparent.

Trial Examiner Batten: I think if the question is asked this witness whether or not this statement of Mr. Falk's is correct, or whether he recalls it, I don't see any objection to that.

The Witness: A. I am quite positive that Mr. Herman Falk asked me to reduce it to writing.

Mr. Lamfrom: That is not the question, Mr. Kinch. Read the question to him.

(Question read by the reporter.)

235 The Witness: A. Yes.

Q. (By Mr. Lamfrom.) You would say that he was ot testifying to the fact?

A. Yes. I don't recall that he said it.

Q. You don't recall it. Would you say that if Mr. Harold alk testified here as follows, in effect: "If you"—referring o you—"have got anything in that plan that is worth taking ut of it, we can get some benefits out of it and the men can et some benefit out of it, I will be glad to discuss it with ou?"

A. I don't recall Mr. Harold Falk saying anything like hat. Most of our talk, Mr. Herman Falk was the one that one the most of the talking.

Q. Well then, that was October 6th?

A. Yes.

Q. And when did you next see Mr. Harold Falk respecting his matter?

A. On October 26th.

Q. October 26th?

A. About 1:30.

Q. And what was the testimony that you gave as to how ou happened to meet with him that day?

A. Mr. Green came and asked me to come, that Mr. Harold anted to see me.

Q. By that time, you had committed your plant to writing?

236 A. It was already in the hands of the shop representatives.

Q. Which recalls me to what I was getting at before. I m not sure of this one point, Mr. Kinch, and I think it is a natter of some consequence here: On October 5, when you rst talked to Mr. Falk, you did not have the plan in writing?

A. No.

Q. It was in your mind?

A. Yes.

Q. On October 6, when you called on him, had you, as yet, ommitted your plan to writing?

A. No.

Q. So, sometime between October 6th and the latter part f October, when you saw him again, you did commit it to riting?

A. Sure.
Q. About when was it that you committed it to writing?
A. Well, I guess it was completed about around the 22nd or 23rd, some place around there.
Q. Did you work on it nights?
A. Sure.
Q. At home?
A. Yes.
Q. Was it in typewritten form?
A. Yes.
1237 Q. When you submitted it?
A. I wrote it in longhand, then I had the girl typewrite it.
Q. Some person typewrite it?
A. Yes.
Q. Then you gave the members of the Council representing the men copies, as you testified?
A. Yes, with a fly-sheet in each copy for their signature.
Q. Yes. And your idea in these classifications was to bring men who were in the upper wage rates down to some extent, and the men who were in the lower wage rates up to some extent, so that they could have a more equable return for the work they were doing?
A. No. I didn't see anybody in The Falk Corporation that was getting too much, to bring them down, but I did see this: That some men, that could be given a smaller percentage of raise, would be put in the upper class, and those in the lower class given a higher raise, to make them more even.
Q. Then, came the meeting of the Works Council, at which you submitted this plan?
A. Yes.
Q. When was that?
A. Why, it was the second Thursday, I believe, in November.
Q. And the Works Council took your proposal, and, in accordance with the constitution and by-laws of that
1238 association, it was to be submitted to the management?
A. Yes.
Q. And thereafter, the management made its reply, and that matter came before a meeting of the Works Council, did it not?
A. Yes.
Q. Now, Exhibit 24, which I am handing you, is a copy of the minutes of the Forty-First meeting of the Works Council held December 10, 1936?

A. Yes.
Q. That is the meeting we referred to?
A. Yes.
Q. When the reply of the management was taken up. Have you gone over the copy which is here in evidence, Exhibit 24?
A. Yes, I am quite familiar with it.
Q. And you have quite a good recollection as to the main things that were done at that meeting?
A. Yes.
Q. You have a distinct recollection, I suppose, as to the action taken upon the management's reply?
A. Yes.
Q. I call your attention to the following excerpt from the minutes:
"A motion to accept the conditions of the management's reply"—or, I will go back a little further:
1239 "Attached is a proposal which was presented to the management after the November meeting, and also the management's reply to that proposal."
Now, "That proposal" means your proposal?
A. Yes.
Q. (Reading.)
"A motion to accept the conditions of the management's reply was voted on as follows: Employee representatives, six in favor, one against, one not voting."
That is the correct—
A. That is correct.
Q. (Continuing.) —happening at that meeting?
A. Yes.
Q. You were the one voting against?
A. Against.
Q. Who was the one not voting?
A. I don't recollect. He never put it in the minutes.
Q. You don't recollect that. The six that voted in favor of accepting the management's reply were whom, do you remember?
A. Well, if I knew who they were, I would know the fellow who didn't vote.
Q. I didn't get that.
A. All but one.
1240 Trial Examiner Batten: He said if he knew the others, or knew those that had voted affirmatively, he would then be able to figure out the one that did not vote.
Mr. Lamfrom: I may have been putting the cart before the horse, but the result would be just the same.

Q. (By Mr. Lamfrom.) Do you know who voted among the six?

Mr. Rissman: I think we ought to know if it was an open or closed vote.

Q. (By Mr. Lamfrom.) Do they vote by ballot?

A. No.

Q. Or viva voce?

A. No, they just say, "Those in favor say 'aye' ", and pretty much as though it was unanimous.

Mr. Lamfrom: I move that that last gratuitous remark be stricken. It doesn't mean anything.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Lamfom.) Now, then, this is a correct report of the proceeding?

A. Yes.

Q. Then, in accordance with the constitution and by-laws of the association of which you were a member, and a representative of the employees, the matter of the suggestion of Anton Kinch, representing employees concerning classifications, and the management's reply thereto, was by a vote of both the employees and employer representatives dis-
1241 posed of, wasn't it?

A. Yes.

Q. And that ended the matter as far as you were concerned?

A. Yes.

Q. You accepted the decision, did you?

A. Sure.

Q. And after that, you did nothing concerning this matter?

A. Well, I did; I did.

Q. Well, what did you do?

A. I went to see—there were several members of the Works representatives that promised to support the proposition at the meeting that we held the day before, or two days before the regular meeting?

Q. Yes. And at the regular meeting—

A. They all agreed that my proposal was okay, and that their men was anywhere from 80 to 85 per cent in favor of my proposition.

Q. That is what they told you?

A. Yes.

Q. Then came the meeting, the minutes of which I have referred to?

A. Yes.
Q. And the management's reply was in?
A. Yes.
Q. It was read at the meeting?
1242 A. Yes.
Q. And the matter was disposed of as the minutes record?
A. Yes.
Q. And then after that, you had some conversations with these men who, before this meeting, had said your proposal was a good one?
A. Yes.
Q. And where did you have these conversations with them?
A. On my way home. In fact, I think I made it my business to go, as I was going home I met Mr. Adamski. I first met Mr. Jones, and I asked him.
Q. Yes.
A. "Here, what was the matter with you? You fellows agreed that the proposition was all right, and you told me yourselves that 80 to 85 per cent of your men was in favor. Then when the meeting comes, you turn kind of white in the face and agree to accept to the Falk proposition?"
He says, "Well, you know, I am married, and I have got children."
Q. I didn't get that. You dropped your voice.
A. He said, "You know, Mr. Kinch, I am married."
Q. Anybody else?
A. There was a few fellows that stopped me, they looked like they were going to stop me and ask me what I thought of the proposition, but I walked away.
1243 Q. That was in the plant where they were going to talk to you?
A. Yes.
Q. And after the meeting of December 10th, you did not discuss this matter in the plant at all with anyone?
A. There was no use to discuss it.
Q. Did you?
A. No.
Q. Now, at the time that you were working in behalf of your proposition, prior to the meeting of the Council on December 10th, 1936, was there any time that you came down to the plant, ahead of the time that you were expected down to start to work?

A. No. Should I tell you?
Q. Yes. I want you to.
A. My time cards show, from all the time I worked at The Falk Company, which is over seven years, that I came to work about the same time, about three-quarters of an hour or more before the working time, I used to sit down to read the paper, or read different things.
Q. In other words, your time, at least the time of the commencing of work for you during this period when this proposition of yours was under discussion, was 8:00 o'clock?
A. Yes.
Q. And frequently you came down at 7:00 o'clock?
1244 A. Always.
Q. You always came down at 7:00 o'clock?
A. From the time I been there until I left.
Q. To read the paper?
A. That varied from fifteen to twenty minutes, sometimes.
Q. Yes.
A. Sometimes I would forget to punch the clock, and it would show probably that I didn't show up until 9:00, but that is very few times.
Q. The factory, or plant, would start work on some shift, the day shift, at 7:00 o'clock?
A. Yes.
Q. Now, isn't it a fact that frequently during the weeks in which this petition was up for discussion, and so forth, that you came down at 7:00 o'clock and went circulating among the men who were working at the plant between 7:00 and 8:00, and discussed this matter of your ideas and petition with them?
A. I had never went to see anybody; only those that came to me and asked me questions, it was my duty to answer as best I could.
Q. Please answer my question. Did you or did you not?
Mr. Rissman: He answered it.
Trial Examiner Batten: He said he didn't.
Mr. Lamfrom: Then he went on. I merely wanted
1245 to stop him when he finished answering my question.
Q. (By Mr. Lamfrom) You say the men came up to you?
A. Yes.
Q. In other words, men who were on the regular day shift, commencing at 7:00 o'clock, came up to you, who were not supposed to commence work until 8:00 o'clock, to discuss these matters with you?

A. It would be a few minutes before work.

Q. Did they come during the day?

A. Yes, occasionally a fellow would stop and say, "How about so-and-so and so-and-so? Tell us about it."

Q. Yes.

A. I would say, "Well, so-and-so may be." That ended it; maybe three minutes, five minutes, there may be a few times as high as ten minutes, but it was my duty to listen to it.

Q. In other words, it was your duty, as a member of the employees' division of the Works Council, to come down to the plant at 7:00 o'clock in the morning, to be available for interviews, questions and discussions with the men who were on the day shift, working at 7:00 o'clock in the morning, is that right?

Mr. Rissman: That is not his testimony.

The Witness: A. didn't say that.

Trial Examiner Batten: Just a minute. Let him answer. I think he is perfectly competent to answer.

1246 Mr. Lamfrom: He is all right.

Trial Examiner Batten: You may answer.

The Witness: A. I didn't say that at all.

Q. (By Mr. Lamfrom) Well, that happpened?

A. Well, I came in for seven years, that was my regular time. If the occasion arises that somebody came, somebody had some grievances as I passed their work, they stopped me and asked me, "How about this, how about that?"

Q. For seven years?

A. Yes.

Q. You were only a member of the Works Council—

A. But they would stop me about something else.

Mr. Lamfrom: Wait a minute. Wait a minute.

Mr. Rissman: Let him answer.

Q. (By Mr. Lamfrom) You were only a member of the Works Council for a short time prior to that, weren't you?

A. Yes. But they used to stop me before I went on the Council, and ask me some questions.

Q. For seven years, when you were employed there, during that time these men would stop you, when you came in in the morning an hour ahead of your regular time, they would stop you and ask you questions, and make complaint to you?

A. No, they didn't make complaint before.

Q. Tell us what happened then.

A. Well, something, some current event occurred,
1247 they thought I was pretty well posted, they would stop me, "What do you think about this?", which would only take a second or two. I would say, "So-and-so," and I walked to the washroom to change my clothes. That was nothing unusual for them.

Q. After you went to the washroom and changed your clothes, between 7:00 and 8:00, 8:00 being your working time—

A. Yes.

Q. (Continuing) —you would sit around reading the paper?

A. I always sat at my bench, waiting, reading my paper, people would come up and ask me questions. If I knew it, I would answer; if I didn't, I would say, "You will have to see somebody else."

Q. How did you happen to come down for seven years at 7:00 o'clock in the morning when your regular time commenced at 8:00?

A. I came down to kind of relax, and read a paper, nothing in particular. There are other men that used to come down at the same hour.

Q. I am talking about you.

A. Well, that was my reason.

Q. What time would you have left the factory the night before?

A. You mean my pob, my work?

Q. Yes.

A. Well, 4:30, sometimes 5:00, sometimes 6:00, if I
1248 work overtime. There was a time when I worked until 10:00.

Q. Invariably, practically all the time, you came down at 7:00 o'clock in the morning, you would relax and read the paper?

A. With very few exceptions, I would be down at between 7:00 and a quarter past 7:00. I walked down and walked home.

Q. Isn't it a fact that during the time this petition of yours was under discussion, and being worked at by you that you interviewed a number of men while they were at their work, between the hours of 7:00 and 8:00 in the morning, and discussed it with them?

A. Unless they asked me, I never went to them.

Q. But if a man asked you to discuss it with him, you did discuss it with him?

A. Certainly, I had that right.

Q. You thought you had that right?

A. Yes.

Q. Did the foreman ever tell you to stop that?

A. Never.

Q. Did the foreman ever tell you to stop circulating the petition around? I am not saying that you did, but did the foreman ever tell you to stsop circulating the petition around during working hours.

A. Never.

1249 Q. Then anyone who has testified here to the effect—the foreman—that he did, is not telling the truth, is that correct?

A. That is correct.

Q. You were never asked by a foreman not to circulate any papers?

A. The only time I was asked, was to withdraw the petition, not to not circulaize, but to withdraw the petition, was by Mr. Green on October 26th.

Q. He asked you to withdraw the petition?

A. Yes.

Q. He did not ask you not to circulate it?

A. No.

Q. That was the testimony you gave this morning with respect to that conversation?

A. Yes.

Q. And that was the only conversation you had with anybody respecting the circulation of the petition?

A. Yes.

Q. Or respecting talking with the men between the hours of 7:00 and 8:00?

A. Yes.

Q. Nobody ever reprimanded you for that?

A. If they had, I would not have done it.

Q. Isn't it a fact that one Saturday, December 26th,
1250 as a matter of fact, you induced a number of the men working near you not to come down that day, and you didn't come down either?

A. No.

Q. Did you ever have any conversation with any of the men on that?

A. No.

Q. Was that ever brought up against you as a matter of complaint by anybody?

A. No, sir. I told Mr. Henderson, I asked Mr. Henderson two weeks ahead of time, and told him I would not be to work at that date.

Q. Yes.

A. And he said it was all right.

Q. Who is Anderson?

A. The foreman, or superintendent, rather.

Q. Did you ever talk to any other of the men working there—

A. They talked to me.

Q. Did you ever talk to any of the other men working there near you, and tell them it would not be necessary for them to come down on December 26th?

A. I should say I didn't.

Q. You never did that?

A. No, sir.

Q. Did you have in mind, Mr. Kinch, that this pro-
1251 posal of yours, which would have the effects, at least, of probably lowering the wage earnings of some of the men and increasing the wage earnings of others—

Mr. Rissman: Just a minute. That is not the testimony. There is nothing in the record like it.

Trial Examiner Batten: Just a minute. Mr. Rissman, I think if you will let him proceed with this witness, I think this witness is perfectly capable of taking care of himself.

If you will just let him proceed, I think we will get through some time.

Mr. Lamfrom: I will strike that out, and put it differently.

Trial Examiner Batten: All right.

Q. (By Mr. Lamfrom.) Did it ever occur to you that the circulation of this petition and the explanation that you gave of its effect to the men working there would cause considerable discontent among those that were earning higher wages, and put them in fear that their wages might be reduced?

A. No.

Q. Did you ever hear anything of that kind going around?

A. But they signed 100 percent, or 98 percent of them signed it.

Q. 98 percent of whom?

1252 A In my department.

Q. In your department?

A. The people I represent.
Q. And the classifications were only for your department?
A. No, for the whole factory; but they stopped it.
Q. Who stopped it?
A. Green stopped the circulating of this petition.
Q. This petition, it appears, was circulated throughout the entire plant?
A. Well, they stopped it. What the other representatives did, I was unconcerned, it was up to them how they went about it. This is the instructions I gave them:
Q. Yes.
A. "At noon time, get your men together and explain the proposition, and those that are in favor, have them put their names on it so there are no 'ifs' and 'ands' about it. Those that are in favor, all right. If they are not, then I know where I stand."
Q. In the preparation of this petition, and your concern about the well-being of the Falk employees, and the presentation of the petition to the Works Council by you as an employee representative, was done for the purpose of obtaining for the employees better working conditions, was it not?
A. Well, I wouldn't say, "working conditions."
Q. Well, what was the purpose of it?
1253 A. I would say improving the relation between the management and the men themselves.
Q. Improving the relation between the management and the men themselves?
A. Yes, and between themselves with the management, and between themselves.
Q. And between the men themselves?
A. Yes, between the men themselves.
Q. To create a better feeling—
A. Exactly.
Q. (Continuing.)—between the men themselves?
A. Exactly.
Q. That was your prime purpose?
A. That was my prime purpose.
Q. And, incidentally, a better feeling between the men and the management?
A. The management would get the benefit of it.
Q. That would be an incidental result?
A. Yes.
Q. But your prime purpose in the preparation, circulation, and what occurred thereafter with reference to this pe-

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tition, as far as you are concerned, was to get a better feeling among the employees themselves?

A. No, I wouldn't say that.

Q. Well, what was it? Let's get that clear.

1254 A. My purpose in working out that proposition was this: If the men would understand each other better, and know what each other is getting, it would create better feeling among the men, and therefore it would increase the production and help the management.

Q. But the prime purpose of it was to create this better feeling among the men as workers in the Falk plant?

A. And the management.

Q. And the relation between the men and the management, and incidentally, by the increase in production, which would flow from that relationship so improved to benefit The Falk Corporation?

A. You can't benefit one without benefiting the other.

Q. Part of your objective was to benefit The Falk Corporation, wasn't it?

A. Why, I would say "50-50."

Q. "50-50"; 50 percent was to benefit the relationship among the men, and, by reason of that improved relationship as so benefited, the other 50 percent to benefit The Falk Corporation, is that right?

A. That is correct.

Q. At the time you made this request, prepared these papers and gave this matter the thought that you did, what organization or labor union were you a member of?

A. None.

1255 Q. Are you a member of any labor organization today?

A. No.

Q. Have you been?

A. I made application.

Q. To what?

A. I asked the boys to submit my application for the—

Q. The C. I. O.?

A. (Continuing.)—the C. I. O., yes.

Q. Recently?

A. But I done from Florida.

Q. You did that from Florida?

A. Yes. I wrote.

Q. After you left the employment of The Falk Corporation. You have a farm in Florida, haven't you?

A. No, sir.
Q. No farm?
A. No.
Q. There seems to be a general impression among the men that I talked to that you have made a statement—I just want to get this right—that you had a farm in Florida, and when you left here and went down to Florida, you were going to become a resident of Florida, is that right?
A. I don't think I made such a statement, that I had a farm. I said I had a home; so I had a home here.
Q. Did you own a home in Florida?
1256 A. I didn't say that. I said I had a home.
Q. I asked you whether you do.
A. I do not.
Q. You are stopping with some friends down there?
A. Yes.
Q. That is what you call your home in Florida?
A. Yes.
Q. Is that friend some relation of yours?
A. None at all. We have been friends for years.
Q. You don't own your home here in Milwaukee, do you?
A. Well, I call it home where I live, of course.
Q. You call home the place where you spend your days for the time being?
A. Sure.
Q. And in that sense, you have a home in Milwaukee, and one in Florida?
A. Yes.
Q. And do you now reside in Florida, or reside in Milwaukee?
A. I am now residing in Milwaukee.
Q. Your intention is to stay here?
A. If you don't send me back.
Q. Well, I, for one, will not send you back. During the time that you were residing in Florida—by "residence," I mean your actual physical presence, and your idea that that is your home for the time being?
1257 A. Yes.
Q. While you were residing in Florida, you did some farming?
A. Well, I did plant a few string beans and a few potatoes, for experiment, to see what I could do, if they would grow.
Q. Working with this friend of yours?

A. Yes.
Q. And you and he worked in the garden, and fished?
A. Yes.
Q. Did you have any luck with the fishing?
A. Well, we had some good luck with the fishing.
Q. While you were there, did you attempt to get any work?
A. That is a poor place to look for a job.
Q. (By Trial Examiner Batten.) The question is, did you?
A. No, I didn't.
Q. (By Mr. Lamfrom.) Well now, you were discharged on December 31st, weren't you?
A. Yes.
Q. When did you leave for Florida?
A. I don't know exactly. I think it was January 14th or 15th.
Q. About the middle of January?
A. I put in my application with the State Employment—what do they call it? Wisconsin Employment Bureau?
Q. That's right.
A. And then I waited around a few weeks—I am ex-
1258 pressing just my opinion now—I felt that, due to the circumstances and everything, I would have a tough time to get a job here.
Q. Why was that?
A. Well, I don't know whether that would have any what I may say bearing, or whether my belief was right or not, but I felt that this association keeps pretty good tab on things, and I thought with all these difficulties with Falk, probably I would have a tough time to get a job in Milwaukee unless I changed my name.
Q. But you didn't do that?
A. No.
Q. And having the feeling that you would have a pretty tough time to get a job here—which is your own opinion, isn't it?
A. Yes.
Q. You went to Florida?
A. Yes.
Q. It took you about three or four days, I suppose, on the regular train service, to get to Florida, to get down there, didn't it?
A. No. I went from here to Washington.

Q. You went from here to Washington?
A. Yes.
Q. You stayed in Washington a while?
1259 A. Yes. I was in Wasington for about ten days.
Q. For about ten days?
A. Yes.
Q. That would take you up to about January 25th?
A. I reached Florida, I think it was somewhere around the 26th or 27th, somewhere around there.
Q. And in Washington, I suppose you enjoyed the sights and the orations of the congressmen and orators?
A. Yes, I really enjoyed it.
Mr. Rissman: I move to strike that out.
Trial Examiner Batten: We are getting pretty close to the end now.
Mr. Rissman: I hope so.
Mr. Lamfrom: Sure, you hope so. There is every reason for you to hope so.
Q. (By Mr. Lamfrom.) Now then, you went from there to Florida?
A. From there to Florida.
Q. Yes; and started gardening and fishing?
A. Well, yes, a little gardening and fishing.
Q. Took life comfortably, easy?
A. Well, I wouldn't say comfortably. There are quite a few mosquitoes at times.
Q. Outside of the mosquitoes, you had a very nice comfortable time?
1260 A. Yes.
Q. And when did you get back here?
A. Last Friday. I don't know what the date was.
Q. And while you were in Florida, bothered some by the mosquitoes, as you have led us to believe, did you attempt to get any work anywhere, any regular employment or job?
Mr. Rissman: You asked him that question, and he answered it.
The Witness: There was no job there.
Q. (By Trial Examiner Batten.) The question is, did you make any effort to secure one?
A. No, I didn't. I wrote to this employment bureau.
Q. (By Mr. Lamfrom.) The Wisconsin Employment Bureau?
A. Yes.
Q. Unemployment Bureau?

A. Yes.

Q. And did you hear from them?

A. Yes, they sent me a notice, and told me they didn't have a job for me.

Q. Your thought in going to Florida, rather than to stay here, was for what reason?

A. Cheaper living.

Q. Cheaper living down there?

A. Yes.

Q. You felt you couldn't get a job here on account
1261 of Metal Trades, and that if you couldn't get a job here, you would go down to Florida and live down there, you could live more cheaper, is that right, while you were waiting for something to turn up? Is that right?

A. Well, not exactly. I had my eyes open all the time, if anything turned up, I would be on the job, but it didn't.

Q. While you were in Florida, did you make any effort to get a job there?

A. No. But I did thought that something might develop down there in the fishing line. There are people over there that make money fishing.

Q. You are telling me? I know it.

Trial Examiner Batten: Not fishing?

The Witness: Yes.

Mr. Lamfrom: Yes, professional fishermen.

Trial Examiner Batten: I thought you meant taking the tourists out to fish.

Mr. Lamfrom: No, they don't make any money on that.

Q. (By Mr. Lamfrom.) Outside of what you have testified to, since you left The Falk Company, you have done no work, or made any other or further attempt to get any situation?

A. Yes, that's about right.

Mr. Lamfrom: The end which was so devoutly wished I think is here.

Trial Examiner Batten: You mean, wished by the Examiner?

1262 Mr. Lamfrom: No, not by you, but by my friend on the other side.

Mr. Rissman: Have you finished?

Mr. Lamfrom: There may be something I might have omitted. With your indulgence, Mr. Engelhard would like to ask the witness two or three questions.

Q. (By Mr. Engelhard.) Mr. Kinch, do you recall that

you visited a man by the name of Ramsey, to have his signature put on the petition?

A. No, sir.

Q. Do you know who Mr. Ramsey is?

A. Yes, sir.

Q. You didn't solicit him?

A. No, sir, though he came to me.

Q. He came to you?

A. Yes.

Q. Will you tell us what the conversation was between you and Mr. Ramsey?

A. During the lunch time, he came to me and wanted to know about the proposition, and I explained it to him. He said, "You know, I didn't sign it."

I said, "That's all right. This is a free country, and I hold nothing against anyone that doesn't sign it."

Q. I am not asking you that. I am asking you, what did he say and what did you say.

1263 A. That is what I am telling you.

Q. You said you were not holding anything against anybody? Did you say that to him?

A. To him, yes.

Q. All right. Go ahead and tell us what he said.

A. And he went on telling me that he was a member of some other union, and I says that was all right.

"Well," he said, "I like that proposition." He said, "After I read it a few times," he says, "it looks pretty good." He says, "There is only one thing on that proposition that I don't like."

He said, "A man has to serve here so many years before becoming qualified to class A."

"Well," I said, "I thought that was the best proposition in the whole plan."

He said, "You know, I only been working here a short time, and it would kind of stop me from getting into the first grade."

"Well," I says, "you can't change the plan for one man. If you don't sign it, it is all right with me."

There was more than one man there, when I told him of it, it was during the lunch time.

Q. He didn't sign it?

A. I don't know whether he ever signed it or not, because I never went around with the petition and asked any-

1264 body to sign.

Q. I am asking you whether or not you presented the

petition to Mr. Ramsey and requested him to sign the peti tion.

A. No, positively not.

Q. Did you ask him his wage rate?

A. No.

Q. Do you deny that you asked him his wage rate, and h refused to give it to you?

A. Positively.

Q. You deny that positively?

A. Absolutely.

Q. Do you recall having a conference with Mr. Greget, i which you asked him his wage rate?

A. I don't recall ever having a conference with Mr Greget, asking him r his wage rate.

Q. You don't recall that?

A. No.

Q. Might you have had a conference with him, that yo cannot remember at this time?

A. Oh, it might be that during the course of conversatio he said something about the wage rates. He is a high mar He may have asked me about what effect it would have o those that are in the upper brackets, in explaining him th proposition, I says, "You know, there is nothing in thi 1265 proposition that would even suggest lowering you mer or the wage of anybody."

Q. I am asking you now whether or not you didn't have fifteen to twenty minute or possibly longer conversation wit Mr. Greget while he was at work?

A. If I had any conversation with Mr. Regets—

Q. Mr. Greget.

A. Mr. Greget. If I had any conference with him at all he came to me, I never went to see anybody.

Q. I am asking you now whether or not you had a confer ence with him while he was at work, while he was working a his machine, while he was working at it.

A. I couldn't tell you that, because if he came to me, whe he was at work, I can't tell you whether he was working o not.

Q. I am asking you whether you went to him while he wa at his machine and talked to him.

A. I never went to anybody while they was working a their machine, and not to him.

Q. Not to anyone else?

A. Not at all, that I recall.

Q. And talked to him about your proposition, or anyone else in the plant?

A. If they came to me, yes; I can't recall, I don't remember that he came to me.

1266 Q. (By Trial Examiner Batten.) The question is, did you ever go to a place where one of the other men was working at his machine, and talk to him about your plan?

A. As far as I recall, I never have, but there might have been a time that somebody called me over as I passed to work. I don't recall it, though, one single time.

Q. (By Mr. Engelhard.) Did you ever stop men who were passing through your department and talk to them about your plan, during the working hours?

A. I don't recall one single time doing that, during working hours.

Q. And what single time was that?

A. I don't remember one single time, I say.

Q. Oh, you don't remember one single time. Then you deny that you talked to Mr. Greget during working hours for a period of fifteen or twenty minutes, or probably thirty minutes?

A. It might have been that he came into our place. I done a lot of business—not business, but work with Mr. Greget. Mr. Greget used to bore the cases that I assembled, and sometimes he would come over during working hours and check up on things. That happened several times.

Q. Did you talk with him?

A. I talked with him.

Q. About this working plan?

1267 A. I don't recall it, unless he asked me some question on it.

Q. Did you ever talk with him about this plan, and he told you not to talk with him about it during working hours?

A. Never, he never said anything of the kind.

Q. Who is your foreman over there?

A. Mr. Henderson,—he is the superintendent.

Q. Who was your foreman?

A. I guess it was Dukas.

Q. Dakhart?

A. Dakhart, however you pronounce it.

Q. Didn't Mr. Dakhart tell you several times to quit going into other departments during working hours?

A. Positively not.

Q. And talking about your proposal?

A. Positively not.

Q. Did he ever tell you to quit talking about the proposal to men while they were at work?

A. Positively not.

Q. Either in your department, or in other departments?

A. Positively not.

Q. You stated this morning that when Mr. Falk told you that they had a loss the prior month, which would be the month of September, 1936,—

A. Yes.

1268 Q. (Continuing.) —of $18,000, that you did not believe that?

A. No, I didn't say I didn't believe it.

Q. Well, did you believe Mr. Falk when he made that statement?

A. I didn't, but I didn't say that.

Q. I say, did you believe him when he made that statement?

A. No, I didn't.

Q. Why didn't you?

A. Because there may show up losses in that month, but they actually made it, or the bills could not have been paid.

Q. Did you know whether or not The Falk Corporation suffered a loss of $18,000 in the month of September, in their foundry?

A. I did not.

Q. Mr. Falk told you that, however?

A. Yes.

Q. Did you have any reason not to believe that statement?

A. Well, I have reason of my own, yes.

Q. What were your reasons for not believing that statement?

A. Because I heard it so many times. I have a right to what I want to believe and what I don't want to believe, haven't I?

Q. I want to know your basis for not believing that

1269 statement.

A. I don't know that I have a particular reason, other than that ever since I had been working there, I heard they was losing money and losing money all the time, and the plant is running all the time, I don't see why I should believe that.

Q. Do you mean that Mr. Falk told you they lost money all the time?

A. That is common knowledge—
Q. Wait a minute.
A. (Continuing) —in the shop.
Q. Wait a minute. I am asking you whether Mr. Falk ever told you that the Falk Corporation was losing money all the time?
A. That was the only time Mr. Falk talked to me directly, that he told me about it.
Q. Did he tell you in what years The Falk Corporation lost money?
A. Who do you mean? Harold Falk?
Q. Yes.
A. No.
Q. Or did any other of the officers, did they ever tell you in what years the corporation had a net loss?
A. Certainly not, they didn't tell me. That wasn't my business to know.
1270 Q. What's that?
A. It wasn't my business to know.
Q. But you went to the tax division, didn't you, and investigated the corporate returns of The Falk Corporation, didn't you?
A. Was there any better place to find out the earnings of the company than there?
Q. All right. You say you found out what they made in various years?
A. Yes, sir.
Q. What did they make in 1933, net?
A. I was not concerned about '33.
Q. What did they make in '32?
A. I wasn't concerned about '32.
Q. What did they make in '34?
A. I wasn't concerned about that.
Q. What did they make in '31?
A. I wasn't concerned about that.
Q. The only thing you were concerned about was what they made in 1929, is that right?
A. And '35; because that was the basis that I used to bring this proposition up to work.
Q. Did you have any responsible person of The Falk Corporation ever tell you that they made any money in 1935?
A. Why should he tell me that?
1271 Q. Isn't it a fact that, as you went around among these men and argued with them about your proposal,

that you represented to those men that the Falks were claiming they were losing money on their foundry, and that it was not true? Didn't you tell that to the men?

A. I didn't say on the foundry question. I wasn't familiar with the foundry business.

Q. When you told men that what the Falks were claiming was not true, what did you say?

A. I said they made money in 1929.

Q. Did they ever claim they didn't make money in 1929?

A. They never admitted it, I never seen them tell anybody they did.

Q. Answer the question. Did The Falk Corporation ever claim it didn't make money in 1929?

Trial Examiner Batten: I think he answered the question. He said he never heard them admit it.

Mr. Engelhard: Well, that, of course, is entirely different, that is an entirely different answer than what the question calls for.

What is the question?

(Question read by the reporter.)

Q. (By Trial Examiner Batten.) Did Mr. Falk ever tell you they lost money or did not make any, in 1929?

A. No. The only time he told me he lost money—

1272 that he was losing money, was when I called his attention that he wasn't.

Mr. Engelhard: Just a minute.

Q. (By Mr. Engelhard.) When did you call his attention to the fact that he was not losing money, when he claimed that he was losing money?

A. When I entered the room on the 26th of October.

Q. On the 26th of October?

A. Yes: He said, "We are not making money. We are losing money."

Q. You tell me what your conversation was on the 26th of October.

Mr. Rissman: I object. We have gone all over it.

Trial Examiner Batten: I don't think he will go over that again. We are not going to go into it again, and from now on, I must confine you to one or the other of you gentlemen doing the cross-examining. We are not going to be here forever on these matters, cross-examining on the same identical things, we just are not going to do it, because it is an impossible situation.

Mr. Engelhard: It is not my intention to go over anything that Mr. Lamfrom covered.

Trial Examiner Batten: That conversation he has repeated at least four times that I recall myself, and there is absolutely no use of going into it again.

1273 Q. (By Mr. Engelhard) You stated that you called Mr. Falk's attention to the fact that they were making money when he claimed they were not making money.

Mr. Rissman: I object to that question. At the conclusion of Mr. Lamfrom's cross-examination, he said there were some things not covered by him that Mr. Engelhard wanted to cover. I have no objection to that.

Trial Examiner Patten: Permit Mr. Engelhard to finish the question, so we can determine. Read the question.

(Question read by the reporter.)

Trial Examiner Batten: Had you finished your question?

Mr. Engelhard: And I want to add:

Q. (By Mr. Engelhard.) What year had you reference to?

Mr. Rissman: Now, I object, for the reason indicated previously, that we have covered all those conferences and meetings between Mr. Kinch and both Mr. Falks. He testified about three or four meetings with them, and he has testified to when he told them he thought they were earning money, and Falks told him they were losing money, and we have that in upside down and backwards.

Mr. Engelhard's examination, as I remember, was allowed by the Examiner merely for the purpose of covering something that Mr. Lamfrom might have missed.

Trial Examiner Batten: I will sustain the objection. I will restrict it to those matters which were not covered

1274 by Mr. Lamfrom, because we certainly are not going over this whole thing again.

Mr. Engelhard: I do not intend to do that, Mr. Examiner, but this man stated that when he talked to the employer, he indicated to the employer that there were no losses, and I am just trying to find out what losses he had reference to.

Mr. Rissman: I still object.

Trial Examiner Batten: Mr. Lamfrom, I thought, went into that matter pretty thoroughly, and I am not going to permit any cross-examination on those matters that were covered by Mr. Lamfrom, and I think these matters were pretty thoroughly covered; I mean, as to this matter of losses, and so forth; and I am not going to permit any further cross-examination on the matters that, as I say, were covered by Mr. Lamfrom.

If there are any additional matters that you care to cross-

examine on, Mr. Engelhard, the Examiner will be pleased to have you proceed.

Mr. Engelhard: May I make my point clear, that in response to the question I put to him before, as to what he said to employees about losses, he stated that he told the employees that the statements made by the Falk people were not true.

Q. (By Mr. Engelhard.) That is correct, is it, Mr. Kinch?

1275 Mr. Rissman: Just a minute. I object to that as going back to the same thing again.

Mr. Engelhard: I am not now speaking of conferences with The Falk Corporation. I am talking about what he said to employees of The Falk Corporation when he interrupted them.

Mr. Rissman: Are you making your explanation to the Examiner, or the witness?

Trial Examiner Batten: We will recess for ten minutes. Perhaps then we can proceed.

(A short recess was thereupon taken.)

Trial Examiner Batten: We are ready to proceed.

I want to announce at this time that we are going to have a session tonight and tomorrow night, from 7:00 to 9:00, and those who desire to come will have to come in the West entrance, and use the North elevator, and if you advise the watchman at the door that you are coming to Room 409 to the Falk hearing, he will admit you. If you do not give that password, he will not admit you.

Mr. Clark: What is the password?

Trial Examiner Batten: "Falk hearing".

I also advised the custodian that there would be someone down at the door at ten minutes to 7:00, who has been here every day, and is more or less familiar with the men that come, in case somebody comes that is not here this

1276 afternoon, so that they will be admitted; so, if you will kindly pick out somebody that has been here, that can get down at the door from ten minutes to 7:00 until about ten minutes after 7:00, in case somebody comes that should be admitted.

We will proceed, gentlemen.

(Record read by the reporter.)

Mr. Rissman: The question is objected to.

Trial Examiner Batten: My recollection is that I sustained the objection as to anything covered by Mr. Lamfrom. I will

not permit any further cross-examination on those matters which have been previously covered by Mr. Lamfrom.

Q. (By Mr. Engelhard.) You testified on cross-examination conducted by me a few minutes ago that you talked to employees and representatives of employees, that the losses sustained by The Falk peopie were not true. That is correct, isn't it?

A. No, I wouldn't say that is correct, the way it is put.

Q. What did you say to the employees about the claims of losses?

A. They often came around, you know how shop talk is, and said, "Mr. Falk is going around all the time about losing money." I said, "I wouldn't worry about that, if I was you." I said, "This plant is running all the time, they are making money."

1277 Q. Is that what you said?

A. Well, I don't know whether I elaborated any more, but that is about what I said, yes, "This firm is not losing any money."

Q. Mr. Robert Gillett, is that his name, superintendent of your department?

A. Yes.

Q. He was also on the Board?

A. He was on the Council, yes.

Q. You say that he claimed that the foundry—was it the foundry that lost money?

A. Yes.

Mr. Rissman: I object. That entire matter has been gone over.

Mr. Engelhard: It is merely building the basis for a question, that's all.

Q. (By Mr. Engelhard.) Did you ever investigate as to whether what Mr. Pritzloff said was true?

Trial Examiner Batten: Just a minute, Mr. Engelhard. There is just endless testimony in here that he investigated, that he went to Madison, he did all those things. Now, we positively are not going into those things.

Mr. Engelhard: I am not going into that, your Honor.

Trial Examiner Batten: I am not going to permit examination covering those matters again. We never will

1278 finish this thing if we are going to be rehashing it, and I am not going to permit it. That was gone into before.

Mr. Engelhard: I am not asking about his investigation at

Madison. I am asking him what investigation he made as to the particular foundry loss. That would not be reflected in the Madison report.

Mr. Rissman: The reason he testified to those things, he testified he didn't know about the foundry particularly.

Trial Examiner Batten: I understood when you started to cross-examine, Mr. Engelhard, that it was upon some matters that had not been touched upon by Mr. Lamfrom, and my recollection is that that matter has been very thoroughly covered, all this matter pertaining to losses.

If there is some other matter you want to go into that Mr. Lamfrom did not cover, you may proceed.

Mr. Engelhard: I don't recall it. I don't want to be argumentative, I don't want to give that impression, but I do not recall that he has been cross-examined on how he found out what Mr. Pritzloff represented as foundry losses was not true.

Trial Examiner Batten: My recollection is that he testified that while there may have been a loss in the foundry, certainly the company as a whole did not have any loss. That is my recollection. I think the matter was thoroughly covered.

1279 As I just said, I am just not going to permit going into that matter any more, because we just never are going to get this thing to a finish if we are going to keep rehashing this thing all over.

If there are some matters that were not touched upon by Mr. Lamfrom, and you want to cross-examine this witness, I will be glad to have you do so.

Mr. Engelhard: I was just stating that Mr. Lamfrom did not go into that angle of it, about how he verified whether or not there were losses in the foundry.

Mr. Rissman: The Examiner's impression is that he did.

I will object to any further questions, or any further cross-examination on any of the matters touched upon by Mr. Lamfrom.

Mr. Engelhard: Mr. Rissman made an objection, your Honor.

Trial Examiner Batten: I will sustain his objection.

I have stated several times I am not going to permit it.

Mr. Engelhard: Is it your ruling, then, that the question I have asked him has already been gone into on cross-examination?

Trial Examiner Batten: That is my ruling, that this mat-

ter, this whole general proposition as to these losses, and his investigation, and the conversations with respect to them, have all been fully covered.

1280 Mr. Engelhard: Then I will no longer go along that tack.

Q. (By Mr. Engelhard.) Mr. Kinch, you stated that some of the men were receiving a wage that they were not entitled to, that their wage was larger because of favoritism.

Mr. Rissman: I object. That was part of the cross-examination.

Mr. Lamfrom: I didn't go into that, I didn't pursue it, I simply asked that.

Mr. Rissman: Are we to be subjected to cross-examination because you did not pursue a point?

Trial Examiner Batten: The matter was mentioned at the time Mr. Lamfrom cross-examined, as I recall it. I will sustain the objection.

Mr. Engelhard: If you please, Mr. Trial Examiner, while it is true that he testified some of these men were receiving wages that he thought was due to favoritism rather than due to their capacity to earn—at least, that is the inference—there was no question asked him as to who those men were, and I at this time wish to ask him the question.

Trial Examiner Batten: For the purpose of the issues of this case, I think it is immaterial who they were. In other words, I think a good share of the testimony which has

1281 been given here today, even by this witness, is immaterial as to the issues.

The only issue in respect to this witness is his discharge, and why he was discharged, whether the corporation discharged him for a perfectly lawful cause, or whether they discharged him because of union activities.

I can't see any relationship between who he talked to about the increase or decrease in wages, and whether he was discharged for union activities.

Mr. Engelhard. It certainly becomes material, your Honor, if he misrepresented to men in the plant that some men were receiving wages that they were not entitled to, because of favoritism.

Trial Examiner Batten: He has given his testimony, and the respondent will have an opportunity to present his case, and certainly the right to show wherein this witness' testimony is not true, and if he talked with several of these men in the plant, these men have a perfect right, at your request,

to come in here and testify as to what he did say, and the respondent has a perfect right to show that what he did say was not true, and I do not see that we can gain anything from further cross-examination of this witness in that respect.

Mr. Engelhard: Then I will suspend cross-examination of this witness.

Trial Examiner Batten: When I permitted the cross-
1282 examination, Mr. Engelhard, to start with, I understood from Mr. Lamfrom that there were a few questions that probably, in his conduct of the cross-examination, as often occurs with any attorney, it is often hard to cross-examine and keep everything in mind at the same time, I got the impression that there were probably a few questions that Mr. Lamfrom had slipped up on with respect to some matter, and that you were going to fill those in.

Mr. Engelhard: Precisely, that is one of the points I marked down in my record that he had slipped up on it.

Trial Examiner Batten: Now, we are not going to rehash this thing all over. Apparently it is all settled now, anyway.

Mr. Engelhard: That will be all.

Redirect Examination.

Q. (By Mr. Rissman.) When you spoke to Mr. Ramsey, you said it was on the noon hour, during the noon hour?

A. Yes.

Q. It was noon hour for you, and noon hour for him?

A. Yes.

Q. What were your earnings at the time of your discharge?

A. That is hard to answer, because about half an hour before I was discharged, the foreman came to me and whispered to me, "You are getting 72 cents an hour."

Q. What were you actually getting up to that time,
1283 what was the rate of pay at which your last pay check was computed?

A. I don't recollect; about 65 or 66 cents, something like that.

Q. Sixty-five or sixty-six cents an hour?

A. Something like that.

Q. How many hours a week was the normal work week, and were you working?

A. Forty.

Q. You say you were advised by the Wisconsin Employment Service that pursuant to your application, they were telling you that there was no work available for you?

A. That's right.

Mr. Rissman: That's all.

Mr. Lamfrom: I move to strike the question and answers with reference to the compensation of Mr. Kinch, on the ground that under the facts as here set out in the evidence, that it is incompetent, irrelevant and immaterial.

Trial Examiner Batten: The testimony may remain in the proceedings for such value as it has.

Mr. Clark?

Mr. Engelhard: Just one moment.

Recross Examination.

Q. (By Mr. Engelhard.) Outside of putting in this application, as you just mentioned, with the Wisconsin
1284 Employment Bureau, you made no other effort to get a job in Milwaukee?

A. No, I did not.

Q. You had written to no one from Florida?

A. No.

Q. You didn't write The Falk Corporation, either?

A. No, I have not.

Q. You had no communication whatever with The Falk Corporation during that time, after you filed your application with the Wisconsin Employment Bureau?

A. Not with Falk directly, no.

Q. Of any kind, whether telephone, or personally, or by letter?

A. No.

Mr. Engelhard: That's all.

Redirect Examination.

Q. (By Mr. Rissman.) Mr. Kinch, did you correspond with Nathaniel S. Clark, the Regional Director of the National Labor Relations Board, inquiring about your job at The Falk Corporation?

A. I have.

Mr. Rissman: That's all.

Trial Examiner Batten: Mr. Clark, have you any questions?

Mr. Clark: No, I have not.

Q. (By Trial Examiner Batten.) Mr. Kinch, why did you never get in touch with Mr. Falk, with respect to reinstatement?

1285 A. I thought his attitude, the way he discharged me, it wasn't any use. I am not accustomed to begging anybody for anything.

Q. I didn't ask you if you begged anybody. I asked you why did not ask for reinstatement.

A. I didn't feel it was any use. It was really my feeling, too.

Trial Examiner Batten: That's all.

Q. (By Mr. Rissman.) You never received any communication from The Falk Company to return to work, did you?

A. No, I didn't.

Mr. Rissman: That's all.

(Witness excused.)

Mr. Rissman: Mr. Meindle.

LOUIS MEINDLE, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name, please?

A. Louis Meindle.

Q. Are you employed by The Falk Corporation?

A. I am.

Q. How long have you been employed by them, Mr. Meindle?

A. Going on four years.

1286 Q. In what department are you now employed?

A. Welding.

Q. Who is your foreman?

A. My foreman is Henny Hedberg.

Q. How long have you been employed as a welder?

A. I have been employed as a welder from the first day I was hired.

Q. Are you a member of any labor organization?

A. I am.

Q. Which one?
A. C. I. O.
Q. The Amalgamated Association of Iron, Steel and Tin Workers?
A. That's right.
Q. The complaining organization in this case?
A. That's right.
Q. The union that filed the charges in this case?
A. That's right.
Q. Do you hold any office in that organization?
A. I do.
Q. Which office?
A. Financial secretary.
Q. How long have you been financial secretary?
A. Since the 11th of April, 1937.

Q. Prior to your membership in the organization of
1287 which you are now a member, the Amalgamated Association of Iron, Steel and Tin Workers, were you ever a member of a labor union while you were employed at the Falk Company?
A. I was not.
Q. Were you ever solicited for membership in any labor organization prior to the C. I. O. Union?
A. I was not.
Mr. Engelhard: What is the date of that, prior to the C. I. O. union? What date is that?
Q. (By Mr. Rissman.) What date did you join the C. I. O. union?
A. The exact date I couldn't give.
Q. Approximately?
A. Our charter was received the 11th of April, 1937. I believe I signed up my application card, it was the 4th of April.
Q. On the 11th, the charter was issued?
A. The charter was issued the 11th of April.
Q. Do you know Mr. Ben Koch?
A. I do.
Q. Directing your attention to the 22nd day of April, 1937, do you recall any conversation you had with Mr. Koch?
A. What was the date?
Q. The 22nd of April, 1937.

A. I believe that was the conversation I had with him
1288 when he came back from a meeting, I believe it was at the Medford Hotel, for the foremen, where they were in-

structed as to what to do and what not to do as to various laws, like the Wagner law, and the Severson law.

Q. Did you have any conversation with Foreman Ben Koch about that time?

A. Yes, several.

Q. Relating to your membership in the C. I. O.?

A. Yes; I had several conversations with him about that.

Q. Can you relate anyone for us, and give us the approximate time?

A. Yes, it was one evening, I believe it was towards the middle of the week. I was on the night shift, and I think it was about 9:30 in the evening, he came over and pulled me away from my job and started talking to me, and the first thing he asked me was, what I expected to get out of the C. I. O.

Q. What else did he ask you?

A. And I explained my reasons, and then he asked me if I don't think I could get more out of a company union than I could out of the C. I. O.

Q. Did he say to what union he referred, when he said the company union?

A. He knew what union I meant.

Mr. Engelhard: Just a minute. Did he mention com-
1289 pany union, or did you mention it?

The Witness: I mentioned company union.

Q. (By Mr. Rissman.) Tell us what he said and what you said.

A. I said I didn't believe in any organization that was fostered and started by a corporation in regards to an outside labor organization, because the influence of what the managers has, and what the corporation has upon the officers and the members of that said organization, they can't get nowhere at all.

I said, "With an outside organization, you have no influence whatsoever by your management, and when the union is better directed than this company union they have down there at the present time."

Mr. Engelhard: I move the last part be stricken.

Trial Examiner Batten: It is conversation.

Mr. Rissman: It is conversation.

Q. (By Mr. Engelhard.) Did you say "this company union you have down there at the present time," is that part of your conversation?

A. That is.

Q. (By Mr. Rissman.) Go ahead, Mr. Meindle.

A. And that the C. I. O. is far better represented throughout the whole plant, such as grievance committee, steward system, and covers the plant more general than the 1290 union they have there at the present time, this company union.

Q. Was there any further conversation between you and Ben Koch at that time?

A. Yes, there was. He mentioned the fact that if the C. I. O. should happen to gain recognition in the whole corporation, that they would have to have a foreman over every man in order to get out the work to pay for the wages they would have to pay us, and he said we couldn't be friends any more, they would be on one side of the fence, and we would be on the other, and he did mention the fact that he would probably lose his job if the C. I. O. came in there, and the statement I replied to him at that time was that he didn't have to be afraid of his job, because the fellows liked him, they would back him to the last ditch.

Q. In this conversation that you had with Ben Koch, the relationship between you was friendly, was it not?

A. There was no—it was friendly, there was no hard feeling, or anything like that. It was more or less a debate on our own respective unions. I expressed my ideas freely, and he expressed his.

Q. What were some of the ideas he expressed in addition to those you have already given?

A. One thing that he didn't believe in, that we should spend our hard-earned money to go out of town, and said that the minute John Lewis gets enough money, he is 1291 going to skip the country.

I mentioned the fact that John Lewis was president of the United Mine Workers for a number of years, and surely if he wanted to skip the country, he had plenty of money as the president of the said organization.

Then, of course, he casted a few remarks about Adelman.

Q. Were the remarks made by Adelman favorable or unfavorable?

A. Very unfavorable.

Q. (By Mr. Engelhard.) Supposing you tell us what he said about Adelman?

A. He said he didn't see what business that big Jew had

telling us fellows what to do, and what business we had running to him.

Q. (By Mr. Rissman.) Was there any further conversation between you and Mr. Koch on that occasion?

A. Yes. The conversation, I would say, lasted for probably an hour or an hour and a quarter, but the other was very immaterial, and it didn't leave very much of an impression on my mind.

Q. But the things you have related are the outstanding things of that conversation?

A. That's right.

Trial Examiner Batten: Did you ask him where this conversation took place?

1292 Mr. Rissman: I think he told us.

Q. (By Mr. Rissman.) You can tell us again, Mr. Meindle, where did this take place?

A. This conversation took place in the Welding Department.

Trial Examiner Batten: That is what I am interested in, where.

The Witness: In the Welding Department, that is in a large cleaning room of The Falk Corporation.

Q. (By Mr. Rissman.) Where is it?

A. It is located in Department 24.

Q. (By Trial Examiner Batten.) Did he call you away from your work?

A. Yes, sir.

Q. How far away did you go from your work to carry on the conversation?

A. I would say not more than ten paces.

Q. Were you operating a machine?

Mr. Rissman: He is a welder.

The Witness: A. No, I was not operating a machine.

Q. (By Trial Examiner Batten.) I mean, were you welding?

A. Yes, I was.

Q. When he came over?

A. Yes.

Q. You shut off your torch?

A. I put my holder down. We use no torch.

1293 Q. You put your holder down, and you walked off with him?

A. That's right.

Q. How long was it before you returned back to your work?

A. I would say possibly fifteen minutes before 11:00 o'clock.

Q. How long a period were you gone then, altogether?

A. I would say about an hour and a half, possibly, to an hour and three-quarters.

Q. (By Mr. Rissman.) Then you went back to your work?

A. That's right.

Q. Directing your attention to some time early in the month of May, 1937, did you have a conversation with this same man, Ben Koch, about union affairs?

A. Yes, I believe I did.

Q. Where did that conversation take place?

A. That conversation took place also in the shop.

Q. During your working hours?

A. Yes.

Q. Is Mr. Koch in a supervisory position over you, in charge of your department?

A. Yes. At that time, he was the foreman, and at the present time he is superintendent.

Q. I mean, at the time of these conversations was he your foreman?

A. He was the foreman, except there was one talk I
1294 had with him, which was rather a lengthy conversation, that was the evening when he came back from that banquet, that Mr. Hedberg was the foreman that evening.

Q. But at the time of this conversation you told us about a little while ago, Ben Koch was your foreman, was he?

A. That's right.

Q. Now, this other conversation, in May of 1937, who was your foreman then?

A. Bud Hedberg was the foreman that night.

Q. And what position did Koch occupy with reference to your job?

A. That evening, he wasn't in the shop at all, except he came back, I would say he came back about 3:00 o'clock in the morning, and I happened to run across or meet him in the foundry about 3:30 as I was coming back from the hospital, and we talked for possibly fifteen or twenty minutes.

Q. You were coming back from the hospital, you say?

A. Yes.

Q. You went there for attention?

A. Every morning, at 3:30, we go to the hospital, and we have Argyrol put in our eyes.

Q. Go ahead.

A. And I was coming back there, and we were standing in the main bay of the large molding floor, and that is where we held our conversation.

1295 Q. What was the conversation then?

A. That is the time he told me that he had the Wagner law explained to him, and he asked me if I thought it was right that he should be stopped from mentioning his views on unions inside the plant, outside the plant, or any place whatsoever.

Q. Following that conversation, did you ever have any conversation at a later date with Ben Koch regarding the C. I. O.?

A. Why, we may have had several conversations—I know we had, but just what they were all about was probably asking me how we got along with it, and if we expected to get anything out of it.

Q. Did Mr. Koch at any time ever ask you for any information as to what went on at C. I. O. meetings?

A. No, he never has.

Q. Or the intentions of the union?

A. Why, he asked me the intentions of the union. He asked me what we expected to get out of it.

Q. Did at any time Mr. Koch ask you whether or not the union intended to strike?

A. Yes, he has asked me that, he has asked me if we intended to pull a strike down there, and I said no, and I asked him why. Well, he said he would like to give some dates on certain jobs, and he wouldn't want to give no dates if
1296 we had intended or had been planning on pulling a strike.

Q. Can you explain for us what you mean by "giving dates" on certain jobs?

A. They will probably get a job in the shop, and they will probably give a promise date when that job will be shipped out of the plant. If they get a job the first of the month, they will probably have a promise date of the 25th, that job probably has to be out the 25th, or pay a penalty.

Q. That is what he meant when he referred to dates for the jobs?

A. That's right.

Q. Were you present on May 5, 1937, at the Eagles' Clubhouse in Milwaukee, Wisconsin, where there was a conference between representatives of the company and representatives of your union?

A. I was.

Q. And a transcript was taken of what was said there, and what went on there?

A. That's right.

Q. Was a court reporter present?

A. A court reporter took it.

Q. In what capacity were you present at that meeting?

A. I was at that meeting in the capacity of secretary for our lodge.

1297 Q. Can you tell us who else was there on behalf of your organization?

A. Yes. Mr. Landry was there.

Q. As you name each person, will you please indicate their official position in the union?

A. Mr. Landry was there as president; and William Krueger was there as vice-president; Fred Douglas was there as treasurer; Beck was there as recording secretary; I was there as financial secretary; Stephen Foti was there as a steward, and Conrad Withy was there as a steward; Walter Bartholomey was there as a steward; Theo Filwocko was there as a steward.

Q. Can you spell that last name for the reporter, please?

A. I can't spell it.

Lee Rusy was there as a steward.

Q. And that R-u-s-y?

A. R-u-s-y, yes. Richard Bunetta was there as a steward; and there are some whose names I can't recall, or don't know their names.

Q. Can you name for us any of the persons who were there representing the company?

A. Yes. Mr. Harold Falk was there; Mr. Connell was there; Mr. Green was there; and I believe Mr. Henderson was there; Ben Koch was there; and the attorney for the company was Mr. Mann, and Mr. Adelman was our spokesman for the

1298 C. I. O. Union.

Q. Meyer Adelman was there with your group?

A. That's right, and the court reporter, and there were several fellows from the company union that were there, but they were asked to leave, and they didn't want to leave, and at the request of Mr. Falk, I believe they left.

Q. When you say "company union", do you refer now to the Independent Union of Falk Employees?

A. The same organization.

Mr. Engelhard: Now, I move that be stricken.

Mr. Rissman: For the purposes of identification.

Mr. Engelhard: The reference to the Independent Union of Falk Employees, as a company union, I move that be stricken.

Trial Examiner Batten: It may be stricken.

Q. (By Trial Examiner Batten) Who do you mean by company union?

A. By company union, I mean Independent Union of Falk Employees.

Trial Examiner Batten: Is there any objection to that question, Mr. Engelhard?

Mr. Engelhard: I am certainly objecting to having this witness characterize that union as a company union.

Trial Examiner Batten: He said "the company union", and I simply asked him who does he mean by "the com-
1299 pany union."

Mr. Engelhard: Yes. I knew what he meant; everybody knows what he means when he talks about company union.

Mr. Lamfrom: I don't think it makes a bit of difference what he calls it.

Mr. Rissman: That's right.

Mr. Engelhard: I don't think we want the record in this case to indicate that witnesses characterize the union in such fashion.

Trial Examiner Batten: Well, I don't know Mr. Engelhard, that I could change his designation, do you?

Mr. Engelhard: I move that the reference to company union be stricken.

Trial Examiner Batten: Well, I will deny that motion that it be stricken. I can't tell the witness how he is going to designate something. That is his designation for it. I don't know what he means by it.

Mr. Engelhard: He stated he meant the Independent Union of Falk Employees.

Trial Examiner Batten: I am not going to strike his statement because it is his statement, it is not mine.

Anything else?

Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Engelhard) Has there ever been any
1300 serious antagonism between you and Mr. Koch?
A. None.
Q. You are buddies, aren't you, in spirit?
A. Well, I wouldn't say we are exactly buddies. We have our differences. We talk to each other there, we have no words with each other.
Q. What I mean is this: You feel free to talk to him and he feels free to talk to you?
A. That's right.
Q. And when he talked to you at this meeting, which you say lasted an hour, what was the date of that meeting?
A. Which meeting was that?
Q. The one you said lasted about an hour, what was the date of that meeting?
A. I can't give you the exact date.
Q. Was it before or after April 22nd?
A. I believe it was during the week of April 22nd.
Q. Was it before or after the meeting at the Medford Hotel?
A. That was before that meeting.
Q. That was before that meeting?
A. That's right.
Q. Are you a pieceworker?
A. No.
Q. Or an hour worker?
A. We work straight time.
1301 Q. You didn't lose any wages on account of that meeting?
A. No, I lost no wages.
Q. You saw him, and you went off to the side, about ten feet from where you worked?
A. About ten feet, I would say.
Q. No one else overheard your conversation?
A. No, no one.
Q. It was a talk between yourselves?
A. That's right.
Q. There was no spirited argument, was there?
A. None whatsoever.
Q. He was passing on his views, and you were passing on your views?
A. That's right.

Q. He didn't influence you in any way, did he?
A. He could have.
Q. What's that?
A. He could have—he couldn't.
Q. That is what I understood you to say now, he couldn't influence you?
A. Yes, that's right.
Q. He knows that?
A. I believe he did.
Q. And you had a lot of conversation about other matters with him?
1302 A. Yes, we have.
Q. And you have talked politics?
A. We have.
Q. Talked current events?
A. We do.
Q. And you show your disagreements. As a matter of fact, you like to argue a little bit, the two of you?
A. I believe we do.
Q. There was no attempt upon the part of Mr. Koch to leave the impression that he was talking for the company in that discussion?
A. Yes, he did.
Q. All right. Just what did he say that led you to believe that he was the mouthpiece of the company, rather than giving you his personal views?
A. Because he told me, and he has told others.
Q. Just tell us what he told you.
A. All right. What he told me, that we could get more out of the company union than we could out of the C. I. O., for the simple reason the officers and the men of this company union are employees of the company, and he said they have no outside organizers telling them what to do and what not to do, as we have had in our union. He said the company feels more free to deal with these men than they would with the C. I. O.
1303 Q. Didn't he express that as his opinion?
A. As his opinion.
Q. That is what I am asking you.
A. That is what I explained.
Q. You knew he was expressing his personal opinion?
A. That was his opinion.
Q. What I am asking you is, whether or not, while he was expressing that opinion, you felt he was representing anyone who asked him to say these things to you.

A. I believe him to be representing the company in that.
Q. In his opinion?
A. In his opinion.
Q. You knew from conversation you had had with him about other matters what his opinions were generally about unions, didn't you?
A. We never had any talk about any unions whatsoever until the drive started down there between the two unions, there was no union talk whatsoever.
Q. Well, that was that time that union talk was going on generally?
A. Yes, it was going on generally, but not at The Falk Corporation.
Q. I mean, among employees?
A. It was among the employees of The Falk Corporation.
Q. It was during this time it was going on. By the
1304 way, he knew you were a member of the C. I. O., didn't he?
A. He knew I was a member, yes.
Q. You told him that, didn't you?
A. I didn't.
Q. How did he know you were a member?
Mr. Rissman: I object.
The Witness: A. Somebody else told him.
Q. (By Mr. Engelhard) Did he tell you that?
A. No, he didn't tell me that.
Q. How do you know, then, that somebody else told him? Did you tell him that?
A. No; because there happened to be a few stool-pigeons at our meetings who were spies, and everything that happened at our meetings was carrried back to the plant.
Q. Do you know whether Mr. Koch got his information that you were a member of the union in that manner?
A. Yes, because the same party—
Q. Just a minute. Do you know whether he got his information as to your membership by that method?
A. Yes.
Q. Did he say so?
A. He did not. But he asked me—
Q. If he didn't say so, you don't know how he got his information.
Mr. Rissman: I object. He may know in some other
1305 manner.
Mr. Engelhard: Just a minute.

Mr. Rissman: I object to the question, it is improper.

Trial Examiner Batten: Just a minute. When he finishes, you may pursue this course of examination, if you care to.

The Witness: I don't care if he got this information from this here party or not.

Q. (By Mr. Engelhard) That is what I am asking you. You don't know where he got his information?

A. I do not.

Q. If you didn't give it to him, you don't know where he got it?

A. I do not.

Q. You say that on the 22nd day of May, you had a talk with him for about fifteen or twenty minutes in the morning. Was that a friendly discussion?

A. It was.

Q. A passing of views, one from the other?

A. That's right.

Q. Anything that Mr. Koch said to you in no manner lessened your enthusiasm for the C. I. O., did it?

A. None whatsoever. The respective unions were not mentioned at that time.

Q. I mean, at any time he talked to you.

1306 Q. None whatsoever. If it done anything, it increased it.

Q. In other words, what he said to you did not intimidate you in any manner?

A. None whatsoever.

Q. Or it did not coerce you?

A. None whatsoever.

Q. You felt that you were free to belong to the C. I. O. and that nothing would happen to you by reason of your membership?

A. No, I didn't feel that way.

Q. By reason of what he said to you?

A. No, there was nothing that Koch said to me that would lead me to believe that I would be discriminated against.

Q. That is what I am asking you. I am only asking what impressions Koch made on you, so far as your mental attitude towards the C. I. O. was concerned.

A. None whatsoever.

Q. You have testified that you had other conversations with him beside the one which occurred in April and the one in May, but you say you don't remember the details of those

onversations, because they did not impress themselves upon our mind?

A. There was one.

Q. Just one?

A. One still that left an impression now, as I recall.

1307 Q. Otherwise, the conversations did not leave any impression?

A. No, they were just dilly-dally, back and forth, probably good-natured kidding.

Q. That is engaged in practically daily, isn't it?

A. That is.

Q. There is no feeling of restraint between you and Koch?

A. There is, yes.

Q. To what extent?

A. One evening I was coming from the toilet, and I went past the timeclock, there happened to be another welder there, this welder asked me if I would bring back his application which he had made out for membership in the C. I. O., and I told him I would; and coming up the aisle, I saw the superintendent, and he was watching us, and I asked this welder—

Q. Who was the superintendent?

A. Buuck. And I asked this welder to come over with me, and he came, I told him that I would bring in his card tomorrow night, and he could then do whatever he darn felt like with it, and next evening Mr. Koch came over to me.

Q. Mister who?

A. Mr. Koch came over, and asked if I didn't care to work at The Falk Corporation any more, and I asked him why.

"Well," he says, "you have got to stop signing up mem-

1308 bers," and I said, "I didn't sign up no members."

He said, "Didn't you have Steve over here last night, and signed Steve up?" And I denied it.

He said, "I was told you dragged Steve away from the time clock, took him over to your welding booth there, and signed him up."

I said, "I didn't." I said, "I told Steve that if he wanted his card destroyed, I would destroy it for him, but he requested it to be brought in to him, so he could hand it back at a later date."

The following evening, I brought in that application card, and, in front of Ben Koch, I tore that application card up. That is why I felt that I wasn't free any more to act as I felt like in union matters, whether it was talking to some employee about it, or anything relating to a matter of the union.

Q. When Mr. Koch asked you about this matter that was reported to him, after you made the explanation to him, did he say that he believed you or disbelieved you?

A. He didn't believe me.

Q. Did he say so?

A. Well, he said I would have to stop signing up members. He said, "You tried to sign up Steve here last night," and I told him to ask Steve, I said, "In order to show you I didn't sign up Steve," I told him I would bring the card in.

1309 and he could see the date the application was made on.

Q. Yes.

A. And I told him if he wanted any more proof, he could talk to Eddie, which is another welder, which had signed a card just about two minutes before Steve had signed his.

Q. At the shop?

A. At the shop.

Q. And who took those applications?

A. I took them applications.

Q. Then all that Koch was telling you was that you were not to take any more applications in the shop?

A. That I wasn't to sign up anybody more in the shop, under threat of losing my job.

Q. He didn't in any way indicate to you that there were any other restrictions, did he?

A. No other reason whatsoever, except soliciting membership.

Q. On the premises?

A. On the premises.

Q. During working hours?

A. During working hours or otherwise.

Q. On the premises?

A. On the premises.

Q. And that is the only restraint that you have felt?

A. That's all.

Q. Have you talked to him since then?

1310 A. Oh, yes.

Q. About union matters?

A. I have.

Q. In other words, what I mean is this: Outside of that one incident, when he told you, that it was not allowed to sign applications during working hours on the premises, or any other time on the premises, outside of that fact, you have never felt any restraint—

A. None whatsoever.

Q. (Continuing.) —in talking to him?
A. None whatsoever.
Q. He has not shown any change in manner towards you at all?
A. No.
Q. You are just as good friends today as you ever were?
A. I hope so.
Q. You heard him testify the other day, didn't you?
A. I did.
Q. He was frank?
A. Very frank.
Q. And you are frank?
A. I hope I am.
Q. You have had no discrimination in your rate of pay or anything of that sort, have you, since you have been a member of the C. I. O.?
1311 A. That I don't know, I couldn't say, except I believe in my own mind, I believe that I was discriminated against once.
Q. In what respect?
A. Because I have been at The Falk Corporation now four years, I have served my apprenticeship down there, and I have a journeyman ticket as a welder, there are only two welders, I believe, in The Falk Corporation that can produce journeymen tickets, and they have hired numerous other welders since I have been working there, probably a little better than a year's difference, and still, all these men are getting more money than I am, and I have asked Ben several times to give me a little adjustment, not all at once, to bring me up there, but a few cents now and a few cents then, and in the possible course of a year's time, that I would be up with these fellows.
Q. To whom did you make that request for adjustment?
A. I made that request to Ben Koch.
Q. And what did Ben say?
A. He thought that would be a very good idea, or rather, he had mentioned that idea. He said, "I know you are away behind," and he said, "a few cents now, and a few cents then, and in the course of time you will come up to the rest of them," and the first of July there were quite a few of the welders got a raise, and I had asked for a raise, and
1312 he said, "Nothing doing."
I said, "How about the first of August?" He said, "Nothing doing."

"Well," I said, "I suppose I will have to wait until September," and he replied he didn't think there would be any raise coming through in September. That is one reason why I believe I have been discriminated against in getting a raise, to get up with the same pay rates as the other welders.

Q. You say that is merely a belief on your part?

A. That's all.

Q. You have no evidence?

A. None whatsoever.

Q. Has that belief been in any way induced by any statement made to you by anybody connected with the Falk Cor-Corporation?

A. When this arrangement went through in July—

Q. Answer the question.

A. I am going to.

Q. Has anybody spoken to you who was connected with the management of The Falk Corporation that in any way induced you to come to that belief?

A. If you will let me answer that question with the words that exactly happened, I would answer.

Q. Certainly.

1313 A. When the July raise went through, I asked Bud, that is Mr. Hedberg, I said, "I have a pretty good idea why I didn't get a raise," and he said, "What is it? C. I. O.?" I said, "Yes," and that's all there was to that. That is the only reason that led me to believe I was discriminated against in getting that raise, or should have got a raise at that time.

Q. Do you think that Mr. Hedberg knows why you didn't get a raise?

A. I believe he should. He is the foreman.

Q. Does the foreman know what the policy of the company is in regard to a raise?

A. They are the ones that recommend them.

Q. Did you ask whether Mr. Hedberg recommended you? Did you ask him whether he recommended you?

A. I asked Bud to recommend me for a raise.

Q. Did he tell you he did recommend you for a raise?

A. He said he didn't think he would have any influence in getting me a raise.

Q. For you individually, or others also?

A. Individually.

Q. Wasn't it a fact that when raises came through, they came through for all men?

A. Not always.

Q. Or only for individuals?

1314 A. Individuals get raises, just as well as a blanket raise.

Q. As you said before, outside of the conversation you had with Koch and Mr. Hedberg, there is no new evidence that you have been discriminated against because you are a member of the C. I. O.?

A. None whatsoever.

Mr. Engelhard: That's all.

Mr. Rissman: If the Examiner please, I move the last question and answer be stricken. The witness is not competent to testify what is evidence and what is not. He is giving the facts.

Trial Examiner Batten: Just a minute.

Mr. Rissman: I am moving the strike the last question.

Mr. Engelhard: Mr. Lamfrom talked to me, and I don't know what you said.

Mr. Rissman: I say, I move to strike the last question and answer, inasmuch as it calls for an opinion of this witness as to whether there is evidence of discrimination. He has stated the facts, and the Examiner and the Board will determine.

Trial Examiner Batten: Read the last question and answer.

(Last question and answer read.)

Mr. Engelhard: The word "evidence" is used there

1315 in the ordinary layman's sense.

Mr. Rissman: "You have no evidence."

Trial Examiner Batten: I will ask Mr. Engelhard in what sense he uses the word "evidence."

Mr. Engelhard: What I mean is this:

Q. (By Mr. Engelhard.) Have you any proof that you can produce?

Mr. Rissman: I object. He has given the proof.

Trial Examiner Batten: Just a minute. Let him finish.

Q. (By Mr. Engelhard.) You understand what I mean. Have you any proof other than your belief that you were discriminated against because you were a member of the C. I. O.?

Mr. Rissman: I object to the question. He has answered that.

Trial Examiner Batten: He has answered it once before, but I think he is probably competent to answer again.

The Witness: A. The only proof that I have is what I already told you, as to what Mr. Hedberg told me.

Q. (By Mr. Engelhard.) That is what I said, outside of what Mr. Hedberg said, and outside of what conversation you have had with Koch—well, strike that. You said to Hedberg something about a raise, "Why didn't I get a raise?", is that right?

A. I said "I have a very good reason why I didn't
1316 get a raise."

Q. Yes.

A. And he said, "C. I. O."

Q. Did he put it in the form of a question?

A. The way he said it, "It is the C. I. O." in other words, he meant that I thought I didn't get that raise because I belonged to the C. I. O.

Q. Well, that is the way you interpreted his remark, didn't you?

A. Yes.

Q. That you believed that you were not getting a raise because you were a member of the C. I. O.?

A. Because the first words that he spoke, when I told him that I had a good idea why I didn't get the raise, he said "C. I. O."

Q. And you inferred from that, that he believed that was your reason?

A. Why yes, because he had the words right at the tip of his tongue, and if that wouldn't have been in his mind at that time, I don't believe he would have said it, he would have asked me why I had that idea; but he didn't ask me why. He just said, "C. I. O."

Q. I say, that is all the proof or evidence you have of any discrimination, if there was discrimination?

A. Yes.

1317 Q. You don't know, of course, whether in fact it was discrimination?

A. No.

Q. That is what I am getting at. We understand each other on that, don't we?

A. I think we do.

Q. You say you were an apprentice?

A. I was.

Q. How long?

A. I was an apprentice for two years.

Q. Then you became a journeyman?

A. I did.

Q. Of course, your wages were increased when you became a journeyman?

A. They were.

Q. And you have had wage increases since you became journeyman?

A. I have had, I believe, three wage increases since I finished my apprenticeship.

Q. (By Mr. Lamfrom.) That is in the two years?

A. Inside of two years, that's right.

Q. (By Mr. Engelhard.) What are you getting now?

A. I am getting 80-cents an hour.

Q. Any men in your department getting less than that?

A. There is.

1318 Q. And there are men who are getting more?

A. Yes.

Q. How old are you?

A. Older?

Q. How old are you?

A. I am thirty-one.

Mr. Engelhard: That's all.

Trial Examiner Batten: Mr. Clark?

Q. (By Mr. Clark.) When you had this conversation with Mr. Koch on April 22nd, at which time you said you thought the C. I. O. was better represented for the grievances on account of the steward system, you didn't know of the set-up of an independent union at that time, did you?

A. Yes, I did.

Q. Where did you gain your information?

A. From one of the directors.

Q. You had not seen any articles of incorporation?

A. I don't believe there were any articles of incorporation at that time.

Q. If you were told that they were filed on April 19th, would that change your answer?

A. No, I don't believe it would.

Q. And there were no by-laws adopted at that time?

A. Not that I know of, no.

Q. So you knew nothing of the set-up of this organ-

1319 ization then?

A. Yes, I knew they had elected a president, and a vice-president, and a secretary, and so on, and that they had representatives throughout the whole plant.

Q. You knew that on April 22nd, did you?

A. Yes.

Q. And you knew about how this union was going to present its grievances?

A. No, I didn't know that they were going to present any grievances whatsoever.

Q. But you knew their officers had been elected?

A. Yes.

Mr. Clark: That's all.

Mr. Engelhard: Just a moment, Mr. Meindle. I presume I am allowed to go into matters that are developed by other cross-examiners?

Mr. Rissman: After me, please.

Trial Examiner Batten: I presume we will have to keep some sort of procedure here. You had better each take your turn here.

Mr. Engelhard: That is what I want to find out now, what the turn is. He finishes, and then I have a chance to go back on matters developed by Mr. Clark, or by him?

Trial Examiner Batten: By Mr. Clark.

Mr. Engelhard: All right.

1320 *Redirect Examination.*

Q. (By Mr. Rissman.) Mr. Meindle, when Ben Koch expressed his opinions to you about the Independent Union being a better union that the C. I. O., did that create any resentment on your part?

A. Why, yes, it did.

Q. In what way?

A. Because I believe that in any union, labor organization or council, that the foremen or any management that would represent the plant men are no good.

Q. Did you believe it proper for the foreman to express an opinion between two labor organizations, as to which one he thought was a better one?

Mr. Engelhard: That is objected to.

The Witness: A. No, I didn't.

Mr. Engelhard: Just a minute. I object to that, as to what his belief is, as to what it was proper for the foreman to do.

Mr. Rissman: It is highly proper.

Trial Examiner Batten: What were you saying, Mr. Rissman?

Mr. Rissman: It is a highly proper question, Mr. Engel-

hard. The question of intimidation or coercion by a foreman on employees, especially where brought out, as here, that the foreman and employees are friendly, may be created by the feeling in the employees' mind. There does not neces-
1321 sarily have to be any hostility present.

Trial Examiner Batten: I think the Examiner is perfectly competent to take these conversations and determine what effect they may have on whether there is a friendly or unfriendly attitude, and while he may answer this question, I don't know how material it is, or what he thinks about it.

Mr. Rissman: He has already answered it.

Trial Examiner Batten: Then proceed.

Mr. Rissman: That's all.

Recross Examination.

Q. (By Mr. Engelhard.) You testified upon my cross-examination that this conversation that lasted an hour took place before the 22nd of April, is that correct?

A. It was approximately around that time. The exact date I couldn't get.

Q. Now, at the time when you and Mr. Koch had this discussion, you say at that time you knew what the set-up of the Independent was?

A. Yes. It was around the 20th,—the last week in April.

Q. Around the last week in April?

A. That would have been, either it would have been the week of the 20th, or the 23rd, or in that neighborhood.

Q. The proof in this trial so far shows that the Independent Union set-up was not determined until the 24th of
1322 April, that is when the officers were elected.

A. It was during that week. If I am not mistaken, the last day of April would have been around Monday or Tuesday, that would have been the 30th, and the week which I said I held that conversation, they still would have had a chance to draw up their by-laws, and he told that.

Q. Let us get these dates, if we can, straightened out. Did you say you got this information of a man who was an officer of the Independent?

A. I did.

Q. What was his office?

A. He was a director.

Q. Now, he couldn't have been a director before the 24th of April?

A. I don't know if he could have or not, but he could have been present at meetings and got the information.

Trial Examiner Batten: Is there any evidence here as to when they elected their officers?

Mr. Rissman: There is not.

Mr. Engelhard: That is in the record here that was introduced yesterday afternoon, April 24th.

Trial Examiner Batten: In what form was it introduced?

Mr. Engelhard: In the form of testimony from Mr. Greget, who testified that the meeting took place on the 24th of April, that at that time the directors were elected, by-
1323 laws adoped, and the directors elected, the officers of the union, on the 24th of April. That is in the record.

Then the Examiner at that time asked for the introduction of the articles of incorporation and the by-laws.

Trial Examiner Batten: Now, I remember all of that, but I don't remember any testimony as to when the directors or officers were elected. That is the part I don't remember.

Mr. Rissman: And the evidence indicates that the Independent Union was incorporated on the 19th of April.

Trial Examiner Batten: You may go ahead and question him.

The Witness: If the Trial Examiner will let me, I will explain to him how I know how their officers were elected, if he cares to know.

Q. (By Mr. Engelhard.) Mr. Meindle, the thing I am trying to get at is this: It is not very definite in your mind, the time when Mr. Koch talked to you, but you say that that evening—

Trial Examiner Batten: I think it is quite definite. He said it was before this foremen's meeting at the Medford Hotel.

Mr. Engelhard: All right. Now, if that is true, if your Honor please, then it was impossible for a director of the Independent to have given him that information, because there were no directors.

1324 The Witness: I will tell you how I got that information, if you care to know.

Trial Examiner Batten: That is true; but permit the witness to make an explanation. He says he wants to explain it. Let him go ahead.

The Witness: This here fellow who is now a director, who I call the director, was running around the shop talking to the fellows, that they go up to the hall that Sunday when they

ected their directors so he could be put on the board of di-ectors. That is how I know what their set-up was.

Q. (By Mr. Engelhard.) Was that running around that ou say this man was doing before the conversation had with Ir. Koch?

A. That was all happening during that same week.

Q. Who was this director? What is his name?

A. His name was William Stickman.

Q. What did William Stickman tell you about the set-up?

A. He told me, he said he was trying to get one of the najor offices, and he only got elected as a director. He was—

Q. Wait a minute. Wait a minute. Did William Stickman ell you he was elected a director before you talked to Koch?

A. That I couldn't answer, because that I don't recall.

Q. You knew, of course, that the—

1325 Trial Examiner Batten: Do you want him to finish the conversation, Mr. Engelhard, that he had with Stickman?

Mr. Engelhard: No. What I am trying to get at is only a question of time, whether Koch's conversation with him was before the meeting at the Medford.

Trial Examiner Batten: That is clear, that it was before the foremen met at the Medford Hotel. There isn't any dispute as to that.

Mr. Engelhard: It couldn't have been, if it is a fact that he knew about the Independent set-up by reason of the fact that officers had been elected, and directors had been elected.

Trial Examiner Batten: There is no evidence that I know of in the record to that effect.

The Witness: They knew what their set-up was going to be long before they held their election, because the directors and officers, if I am not mistaken, I can't say who they were on days, but at night, they were running around the shop there, soliciting votes, to have the fellows vote for them up at that meeting when they elected their directors.

Q. (By Mr. Engelhard.) The answer, of course, then is, you didn't know what the Independent Union set-up was at the time when you talked to Koch?

A. I knew what their set-up was, yes, because I was

1326 told what their set-up was going to be.

Q. You were told what it was going to be?

A. Yes.

Q. Then the answer is, you don't know what their set-up

is, unless what they said it was going to be actually was carried out into practice?

A. Surely, the fellows that were running around for nomination, they must have been told what the set-up was going to be, and what kind of board of directors they were going to have, or chairman, or vice-chairman; or treasurer, or secretary, or whatever it would be, they surely would have known that before they went out and tried to solicit votes on that matter, because if they didn't know that, they wouldn't have went out to solicit votes.

Mr. Engelhard: That's all.

Mr. Clark: I have nothing.

Redirect Examination.

Q. (By Mr. Rissman.) Bill Stickman was either a director or a candidate for the office of director when he spoke to you, is that right?

A. When he was going around soliciting votes, I believe he was trying for one of the major offices, it is above the board of directors.

Q. Have you finished your answer?

A. Yes.

1327 Mr. Rissman: That's all.

Mr. Engelhard: Just one question.

Recross Examination.

Q. (By Mr. Engelhard.) You don't know, of course, who were elected to the major offices, do you, of that corporation?

A. That I couldn't say. I never attended any of their meetings, or I never inquired from anyone how they go forth to elect their officers.

Q. Did Stickman tell you that he was soliciting votes for any office?

A. He was talking to the fellows, that when they go up there on that Sunday afternoon, to vote for him as to a major office.

Q. What major office?

A. I don't recall just what office he was running for.

Q. Did he tell you how officers were elected?

A. He didn't; and I didn't inquire.

Q. You merely assume that the officers are elected by the voters, don't you?

A. That is what I am under the impression.
Q. I mean, by the members?
A. That is what I am under the impression of.
Q. But you don't know just how officers are elected?
A. I don't know.
1328 Mr. Engelhard: For your information, they are elected by the directors.
Mr. Rissman: I move that be stricken.
Trial Examiner Batten: I think it is all right for Mr. Engelhard to volunteer that information. The charter and by-laws are here.
Mr. Engelhard: The articles of incorporation show how they are elected.
Trial Examiner Batten: And the articles of incorporation. I think it is all right to show who elected the officers.
Mr. Engelhard: It is a matter of public knowledge.
Trial Examiner: It is already in the record that the body elects the directors, and then the directors elect the officers.
Are there any further questions from this witness?
Mr. Rissman: I have none.
Trial Examiner Batten: I have one.

Examination by the Chair.

Q. (By Trial Examiner Batten.) A few moments ago, in answer to one of Mr. Engelhard's questions, you mentioned something about that you thought somebody was a stool-pigeon, and some information was carried back. Will you tell me what you meant by that?
A. Yes. There were several fellows up at our meet-
1329 ing, I have known the fellows for several years, never did like their attitude on anything like that, I saw them up at our meetings, and I asked one of the organizers to go up and ask them fellows if they wanted to sign up.
They didn't sign up, and they went back, they left the hall, and the next day at work Ben Koch asked me what the idea was of throwing them fellows out, for not wanting to join the union.
Q. You mean Ben Koch came up and asked you that?
A. Yes, he asked why these fellows were thrown out of the hall for not joining up with the union.
Q. What did you tell him?
A. I told him if they didn't want to join, what were they

there for. They were there for several meetings before, and they knew what was going on.

Q. What did he say?
A. He didn't have no answer to that.
Q. What are the names of the men?
A. The name of one of the men was Art Mayhew.
Q. What is the name of the other man?
A. Walter Keigrowski.
Q. How do you spell that name?
A. I can't spell it.

Trial Examiner Batten: That's all. We will adjourn until 7:00 o'clock.

(Witness excused.)

1330 (Thereupon, at 5:05 o'clock p. m., a recess was taken until 7:00 o'clock p. m. of the same day, Thursday, August 19th, 1938.)

1331 Evening Session.

(Whereupon, the hearing was resumed, pursuant to recess, at 7:00 o'clock p. m.).

Trial Examiner Batten: I believe we are ready to proceed.

Mr. Rissman: Mr. Neal.

WILLIAM NEAL, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name, please?
A. William Neal.
Q. Where are you employed, Mr. Neal?
A. The Falk Corporation.
Q. How long have you been employed there?
A. A little over seven years.
Q. In what department are you now employed?
A. In the foundry.
Q. How long have you been working in the foundry?
A. Practically all the time.

Q. Are you a member of a labor organization?
A. Yes.
Q. Which one?
1332 A. The C. I. O.
Q. The Amalgamated Association of Iron, Steel and Tin Workers?
A. Yes.
MR. Lamfrom: May I ask, Mr. Rissman, the difference between the Amalgamated Steel, Iron & Tin Workers, and the S. W. O. C. something, that you have in the complaint? What is the difference?
Will you excuse the interruption?
Trial Examiner Batten: Yes.
Mr. Rissman: I don't think the complaint says anything about the S. W. O. C. It says something about the Committee for Industrial Organization.
Mr. Lamfrom: Go ahead. I will look it up.
Mr. Rissman: I will explain this for you, even if it isn't there.
Mr. Lamfrom: Yes.
Mr. Rissman: The Committee for Industrial Organization is the parent organization, consisting of a number of affiliated labor unions. One affiliate is the Amalgamated Association of Iron, Steel & Tin Workers; the S. W. O. C., I doubt if it is mentioned in the complaint—it may be—is the Steel Workers Organizing Committee appointed by the Committee for Industrial Organization.
Mr. Lamfrom: Thank you.
1333 Mr. Rissman: But the union in this case is a local of the Amalgamated Association of Iron, Steel & Tin Workers.
Q. (By Mr. Rissman.) During the time that you were employed by The Falk Corporation, and before your membership in your present labor union, were you ever a member of a labor organization?
A. Yes.
Q. Which one?
A. United Mine Workers of America.
Q. And that was during your time of employment at The Falk Corporation?
A. No.
Q. Within the last seven years?
A. I have never been a member of a labor organization.
Q. In the last seven years, while you have been employed

at Falks, with the exception of your present membership, were you ever approached to join any other labor organization?

A. No.

Q. Were you ever solicited for membership in any American Federation of Labor union?

A. No.

Q. Were you a member of the Works Council?

A. Yes.

Q. When were you elected?

1334 A. In June, 1934.

Q. What department did you represent?

A. I represented the foundry, night.

Mr. Lamfrom: What was that last?

The Witness: Foundry, night.

Q. (By Mr. Rissman.) Directing your attention to the summer of 1933, after the enactment of the N. I. R. A., when the Works Council was being organized, established, do you recall any statements to the men in your department by management employees of the company?

A. Yes.

Mr. Lamfrom: Now—well, he has answered, of course.

Q. (By Mr. Rissman.) Who do you recall speaking to the employees?

A. Victor Hydar.

Q. The gentleman who testified here the other day?

A. Yes.

Q. Do you recall what he said?

Mr. Lamfrom: That is objected to as being incompetent, irrelevant and immaterial, what the management, or what somebody representing the management, said in 1933. It has no bearing on the issues in this case.

Trial Examiner Batten: Is the purpose of this—

Mr. Rissman: I will state the purpose.

Trial Examiner Batten: Perhaps I had better ask you

1335 the purpose of it.

Mr. Rissman: The purpose of this is to indicate the attitude of management in respect to labor organizations, as part of the history or background of the company's labor policy and labor attitude.

Trial Examiner Batten: He may answer. But, Mr. Rissman, I wish that these witnesses—we have covered quite thoroughly, I think, the Works Council and the history of labor relations in this plant.

Mr. Rissman: Yes.

Trial Examiner Batten: And I would like to request that you make it very brief, and get down to the issues.

Mr. Rissman: Except that we have covered it with people, for the main part, who represent management, and they would not be able to testify as to the effect, if any, this attitude of the company had on the men. These are the workers now testifying.

Trial Examiner Batten: Of course, if the facts are brought out here, I think the Examiner can fairly well deduce it.

Mr. Rissman: I mean to bring out those facts.

Trial Examiner Batten: I would make it as brief as possible, because, as far as the Examiner is concerned, I think I have a very clear idea of the various steps in the labor history of this plant.

1336 Mr. Rissman: All right, sir.

Mr. Lamfrom: Then, I understand my objection is overruled?

Trial Examiner Batten: It is overruled for the purpose of showing the labor relations' history of the plant, for no other purpose.

Q. (By Mr. Rissman.) Do you recall the question?

A. Yes. Victor Hydar came out in the foundry, in front of the drying oven, and told the men he was going to organize a Works Council, asked the men to elect men that were working there, men from the foundry, outside of the foremen and the clerical division, asked them to vote for them, and not vote for any outsiders.

A. Can you tell us what situation existed in and around the plant that led Mr. Hydar to tell you and the other employees not to vote for outsiders?

Mr. Lamfrom: Well now, how can the witness answer that?

Mr. Rissman: Let's see.

Mr. Lamfrom: How does he know what led Mr. Hydar to do something?

Trial Examiner Batten: I don't think the question is properly worded. You may ask him what the conditions in the plant were, but whether or not those were the conditions which caused Mr. Hydar to make these remarks, I don't

1337 imagine this witness is able to say that.

Q. (By Mr. Rissman.) At about that time, the time Mr. Hydar made this statement to you and the other employees, was there any activity by American Federation of Labor organizers with reference to the Falk employees?

A. Yes.
Q. What were the activities?
A. They were calling meetings, and trying to organize the American Federation of Labor, and that.
Q. Can you tell us what unions were calling—what union or unions called these meetings?
A. No, sir.
Q. Do you recall the names of any of the labor leaders who were calling these meetings?
A. No, sir.
Mr. Lamfrom: Without the necessity of repeating my objection, will it be understood that all the testimony with reference to the labor history as being detailed by this witness of The Falk Corporation is objected to on the ground it is incompetent, irrelevant and immaterial?
Trial Examiner Batten: Yes, you may have a continuing objection.
Mr. Lamfrom: That's right.
Trial Examiner Batten: To these questions.
Mr. Lamfrom: I mean, without objecting to each.
1338 Trial Examiner Batten: Yes, without objecting, it will be understood that your objection is applicable.
Q. (By Mr. Rissman.) How long were you a member of the Works Council after you were elected in 1934?
A. About two years and nine months.
Q. Would that be the entire time that the Council existed?
A. Yes.
Mr. Lamfrom: At this time, I renew my objection to the evidence given by this witness in answer to questions which deal with the labor history of The Falk Corporation in 1933, outside of any matters connected with the formation of the Works Council, by a motion to strike the question and answers of this witness up to the present time, except those which relate, of course, to his name and occupation.
Trial Examiner Batten: The motion is denied.
Q. (By Mr. Rissman.) Were you present at the meeting of the Works Council held on April 8th, 1937?
A. Yes.
Q. Were you present during that entire meeting?
A. Yes.
Q. Did you hear any statements there by Mr. Harold Falk?
A. Yes.
Q. Will you tell us what Mr. Falk said?
Mr. Lamfrom: When was this? In 1933?

1339 Mr. Rissman: 1937.
Mr. Lamfrom: Oh, 1937?
Mr. Rissman: Yes, sir.
The Witness: A. Well, we had asked for a vacation with pay and a bonus at a former meeting, Mr. Falk came in and offered us a raise in wages to take the place of the bonus with pay.
He also said he would consider a bonus later, that is, he would give us the raise and the vacation with pay, providing there was no third party intervened.
Q (By Mr. Rissman.) Is that what he said?
A. Yes.
Q. Did anybody ask him what he meant by a third party?
A. Yes, somebody asked him what he meant by a third party.
Q. Do you recall who asked him?
A. I do not.
Q. And what did he say in response to the question?
A. Well, he said the C. I. O. and the American Federation of Labor.
Q. Did Mr. Falk at that meeting say anything with reference to the creation of an independent union?
A. Yes, he went ahead and he explained that he had been down to Cutler-Hammer and talked to the officials.
Q. Cutler-Hammer is a manufacturing company in the City of Milwaukee?
1340 A. Yes.
Q. Go ahead.
A. And he had talked to the officials down there, and they had the C. I. O. and the American Federation of Labor, both, in there, and it seems as though they were having trouble; he named a certain amount, I don't remember just what it was, that belonged to each one, he said they were having trouble, and that Cutler-Hammer were going to let it run along the way it was as long as they could.
He said if they couldn't do anything about it, they were going to dump it over in the Government's lap.
Q. And what else did Mr. Falk say in that statement of his?
A. He said he didn't understand just how they were going to dump it over in the Government's lap.
Q. Did he say anything at that time, at that meeting—
Mr. Lamfrom: I suggest that the learned counsel is just—
Mr. Rissman: Are you objecting?

Mr. Lamfrom: (Continuing.)—is just putting the answers in the mouth of the witness. He is not asking, "What did Mr. Falk say?", and what did so-and-so say, but, "Did Mr. Falk say."

Mr. Rissman: I had been asking him what he said.

Read the last question.

1341 (Last question read as follows:

"Q. Did he say anything at that time, at that meeting—")

Q. (By Mr. Rissman.) (Continuing.) —anything about the Independent Union or an independent union?

Trial Examiner Batten: I think, Mr. Rissman, if you will ask the witness to simply repeat what Mr. Falk said—

Mr. Lamfrom: He may not remember without your prompting him a little.

Trial Examiner Batten: (Continuing.) —I think he probably can testify as to what he heard.

Q. (By Mr. Rissman.) Tell us everything you heard, Mr. Falk say, at that meeting about union affairs?

A. Well, it seemed as though at that time he was leading toward an independent union, or something, to take the place of the Works Council.

Mr. Lamfrom: I move to strike the answer as not responsive.

Trial Examiner Batten: It may be stricken.

Q. (By Trial Examiner Batten.) What did he say, Mr. Neal? Just tell us what Mr. Falk said when he talked to you.

A. Well, I believe he was interrupted at that time by Stanley Adamski. Adamski asked him what he aimed for us to do.

Q. (By Mr. Rissman.) What did Mr. Falk say?

1342 A. If he aimed for us to start the Independent Union, something to take the place of the Works Council, well, Mr. Falk said he didn't believe he had anything to say about that, but he would answer the question that yes, that is what he figured on doing.

Q. Did any of the representatives say anything along those lines?

A. Well, there was quite a discussion there. I don't remember just what was said.

Q. Were any plans made at that meeting to create an independent union?

A. Mr. Falk said that he would get the information for

us, how to start an independent union, and would let us know later about it. And also—

Q. Was Mr. Hydar present during all of the time that Mr. Falk made these statements?

A. Yes.

Q. Go ahead.

A. There were also arrangements made to call a meeting later, night.

Q. Is that what Mr. Falk said?

A. No. It was suggested there, I just wouldn't say who suggested it. It was suggested that we call a meeting later.

Q. Were there any arrangements made, as to where
1343 that meeting was to be held?

A. Yes.

Q. What were the arrangements?

A. On company property.

Q. (By Trial Examiner Batten) Where?

A. Underneath the hospital.

Q. (By Mr. Rissman) Did Mr. Falk know or hear of the arrangements to meet on the company property beneath the hospital?

A. Yes.

Q. He was there when those arrangements were made?

A. Yes.

Q. Did he participate in any way in making them?

Mr. Engelhard: I submit, this is all leading.

Mr. Rissman: All right.

Mr. Engelhard: I object to the leading questions.

Trial Examiner Batten: I think the last question is not leading, and that is, whether he made any arrangements for the meeting.

Mr. Rissman: I think I asked if he participated in the arrangements.

Trial Examiner Batten: Yes. In other words, the question is, did Mr. Falk participate in the arrangements for the meeting.

Q. (By Mr. Lamfrom) You are now speaking of Mr.
1344 Harold Falk, are you?

A. Yes, sir.

Mr. Lamfrom: I see.

The Witness: A. Mr. Harold Falk said that we could meet, that is, the Works Council and former Works Councilmen could meet to make arrangements for organizing this

Independent Union on company property; that after it was organized, we would have to meet off the property.

Q. (By Mr. Rissman) That is what Mr. Harold Falk said?

A. That is what Mr. Harold Falk said.

Q. Did you ever attend any meetings subsequent to April 8th, 1937, where an independent union was discussed?

A. No, sir.

Q. Directing your attention to April 12, 1937, did you attend a meeting on that date?

A. Yes.

Q. What kind of a meeting, and where was it held?

A. It was a meeting to form an independent union, beneath the hospital.

Q. Was Mr. Falk at that meeting?

A. Yes.

Q. Did he make any statements?

A. Well, Mr. Falk was asked down at the meeting by someone, I wouldn't say who asked him, but he came down there and was talking, said he couldn't get no informa-
1345 tion as he had promised us as to how to start this independent union, and during this conversation, John Wilfer asked him if he wouldn't put the raise that he had promised us for June 1st ahead a month, that it would keep a lot of the men from joining the C. I. O. or an outside organization.

Q. Did you hear John Wilfer make that statement?

A. Yes.

Q. Are you sure he stated it as you have stated it now?

A. Yes.

Q. And did he use the word or mention the name "C. I. O."?

A. Yes.

Q. What did Mr. Falk say?

A. Mr. Falk said there would be no argument, that if that that is the way the men felt about it, that they could count on the raise.

Q. When did you first learn that there was going to be a meeting on April 12th?

A. I believe on Friday, April 9th.

Q. From whom did you learn it?

A. Stanley Adamski.

Q. He is the man that testified here before?

A. Yes.

Q. Were there any other meetings held by this same group who met on April 12th, after April 12th?

A. Yes.

1346 Q. Where you were present?

A. Yes.

Q. When was the next meeting?

A. April 13th.

Q. Where was that held?

A. Underneath the hospital.

Q. During working hours?

A. Yes.

Q. And what discussion took place there?

A. Well, we sent down underneath the hospital, and we waited for Mr. Falk, he had promised to bring us information as to how to start this independent union.

Q. Mr. Harold Falk?

A. Mr. Harold Falk.

And someone called at the office for him, and he wasn't there, and Richard Falk came down in his place.

Q. Richard Falk?

A. Yes.

Q. The son of Harold Falk?

A. Yes.

Q. Go ahead. Did he say anything?

A. Richard Falk stated that we would have to incorporate, that it would cost $5.00 to incorporate, and it would take three men to sign the papers.

Q. Did Mr. Falk give any other advice?

1347 A. Not that I remember.

Q. What else occurred at that meeting of April 13th?

A. Well, the meeting was adjourned, and some of the night men went home. I went out in the foundry, and talked to Stanley Adamski. Stanley Adamski and myself went over in the machine shop and talked to John Wolf.

During the time we was over talking to Wolf, Harold Falk came in.

Q. Did he say anything?

A. He told us that he had found out we would have to incorporate, practically the same thing that Richard Falk had told us before, and he advised us to call another meeting.

Q. Did he state why you should call another meeting?

Mr. Lamfrom: Let him state what he said.

The Witness: A. Well, to get the men together, to get this thing going as quick as we could.

Q. (By Mr. Rissman) Was another meeting called?

A. Yes.

Q. When?

A. That same afternoon.

Q. Who was present at this same meeting?

A. Practically all the fellows that had been present at the first meeting; one or two of the night men had went on home.

1348 Q. Was that held under the hospital?

A. Yes.

Q. What took place at that meeting?

A. Well, Mr. Falk explained what he had found out.

Q. Mr. Harold Falk?

A. Mr. Harold Falk.

Q. Just tell us what he said, if you can.

A. Well, he said we would have to incorporate, and that we would have to do it as quick as possible, because the C. I. O. were working in the plant.

Q. Can you tell us what was done, if anything, at that meeting in pursuit of this organization?

A. Yes. I believe there was a collection taken up among the men that were there of $1.00 apiece, to pay a lawyer, to pay the lawyer's fees, and to have affidavits made out, and there was a committee appointed to get a lawyer.

Q. Who was appointed on that committee?

A. Les Greget, Stanley Adamski, and John Mitchka.

Q. Was there any discussion at that meeting with reference to who would be a good lawyer to choose?

A. Yes.

Q. Did you have any names suggested?

A. I heard Padway's name suggested, and I heard Clint McCarthy's name.

Q. Those are the only two you heard?

1349 A. Those are the only two I remember.

Q. (By Mr. Lamfrom) Who was the second one?

A. Clint McCarthy.

Mr. Rissman: Do you know him?

Mr. Lamform: Never heard of him.

Q. (By Mr. Engelhard) Let me see if I got it. You say Clint?

A. Clinton McCarthy.

Q. Clinton?

A. Clinton McMarthy.

Trial Examiner Batten: Mr. Rissman, I asked Mr. Falk come down here, because I had only one question I would e to ask him. Would you like to get away, Mr. Falk?

Mr. Harold Falk: No. I would just as soon stay.

Mr. Rissman: If you want to break in, it is all right.

Mr. Falk: I will stay.

Trial Examiner Batten: There is only one question. How-er, in case you want to remain, we will defer it.

Mr. Falk: No, I will be glad to stay.

Q. (By Mr. Rissman) Who appointed this committee of ree?

A. The men that were at the meeting.

Q. Were they appointed by a chairman? Or, just tell us ow it was appointed.

A. I believe they were appointed by chairman.

350 Q. By whom?

A. By chairman.

Q. John Wolf?

A. John Wolf.

Q. Were there any suggestions at that meeting that the ommittee should consult Mr. Falk about an attorney?

A. Yes.

Q. Who made that suggestion, if you know?

A. I believe John Wolf made the suggestion at that time.

Q. Did he mention it before or after there was a discus-ion of attorneys, do you know?

A. After.

Q. Afterwards. Were there any objections by anybody resent as to the committee's going to see Mr. Falk about an ttorney?

A. No.

Q. And have you ever had any foreman or superintend-nts at the plant speak to you with reference to labor organ-zations?

A. Yes.

Q. Can you tell us who, and the approximate time?

A. Arthur Kane spoke to me once, and Ham C. Buuck.

Mr. Engelhard: I wish you would talk a little louder. I idn't that that last name.

The Witness: Buuck.

351 Q. (By Mr. Rissman) When did Buuck speak to you?

A. On April 23rd.
Q. Where was it?
A. On the east end of the foundry, the large foundry.
Q. Is that where you work?
A. That is where I worked at the time.
Q. Were you working at that time?
A. Yes.
Q. At that place?
A. Yes.
Q. Was it during working hours?
A. Yes.
Q. What did Buuck say to you on April 23rd?
A. Well, it had been spread around the plaint that the Independent Union was going to hold a meeting April 24th, and that we wouldn't work. I asked Mr. Buuck if we would work.

At that time, Mr. Buuck gets mad and says, "I don't have to recognize you."

I said, "I didn't ask you to recognize me."

Q. What else was said?

A. He said—he studied a few minutes and says, "No," he said, "we are not going to work tomorrow." He said, "We are not going to work Sunday, either."

Q. Was April 23rd on a Friday?

1352 It was on April 23rd, Friday, yes, the day before that.

Q. What other conversation took place between you and Mr. Buuck?

A. And Mr. Buuck went ahead and says, "Louis Meindle, Steve Fodi and yourself, I just feel sorry for you."

Q. Louis Meindle is the man who testified here earlier?
A. Yes.
Q. Who is Steve Fodi?
A. He is a steward from the foundry.
Q. A member of your union?
A. Yes.
Q. Did Mr. Buuck explain what he meant by that?
A. He didn't explain what he meant by it, no.
Q. Did you ask him what he meant by it?
A. No.
Q. Did you understand what he meant by it?
A. I took it to mean that he had heard I was made a steward of Lodge 1528 of the C. I. O., and it was to his dislike.

Mr. Engelhard: Now your Honor, I move that be stricken. That is not proper testimony.

Mr. Rissman: I think it is proper for the witness to indicate what his reaction was to the statement by the superintendent that it will be too bad for him and some others.

Mr. Lamfrom: Suppose the superintendent chuckled
1353 when he passed by this fellow, and he took that to mean that he was disdainful of him because he belonged to the union, would that be proper evidence?

Mr. Rissman: Are you making argument on the objection?

Mr. Lamfrom: Yes.

Trial Examiner Batten: I think the question, the way it is worded, is improper, and I will permit the answer to be stricken. I think it is proper to inquire what position these three men occupied.

If you want to show any facts surrounding this incident, all right, but I don't think it is proper for this witness to put any interpretation upon somebody else's statement.

Q. (By Mr. Rissman) Did Mr. Buuck ever make any such statements to you before this time?

A. No.

Q. Were you engaged in any activities other than your union activities in and around the plant that would warrant such a statement from Mr. Buuck?

A. No.

Mr. Lamfrom: Just a minute. This calls for a pure conclusion on the part of the witness. Has he done anything, or indulged in any conduct which he thinks would warrant such a statement from Mr. Buuck. How can he testify as
1354 to that with any probative force?

Mr. Rissman: I think he can very well testify.

Mr. Lamfrom: With any probative force?

Trial Examiner Batten: I will permit the question and answer to stand. I don't think it has any particular value. I think Mr. Rissman, the thing to show by this witness is any surrounding circumstances, not what he thinks about it. I mean, it is hard for somebody else to put an interpretation upon somebody else's statement. There are too many motives. I mean, the human mind is such.

Mr. Rissman: If the Examiner please, the matter of intimidation, of intimidating statements by a superior to an employee I think is highly material, the effect of those statements upon the employee, and I think the employee should be

able to testify and state what effect that statement had upon him, if he knows.

Trial Examiner Batten: I don't think he has been asked what effect that statement had upon him. I don't recall any question involving any effect upon this witness.

Q. (By Mr. Rissman) Will you tell us, Mr. Neal, if this statement of Mr. Buuck's had any effect upon you?

A. Yes.

Q. What was the effect?

A. Well, I learned to be more careful about speaking to Mr. Buuck, I was afraid that I might get in trouble
1355 with him.

Q. What effect did this statement have on you with reference to your feeling of security in connection with your labor activities?

Mr. Lamfrom: That is objected to as purely leading. He just testified to the effect this statement had on him, now you are adding to it the suggestion, and almost putting the words in his mouth, as to what effect it had on him.

Trial Examiner Batten: Will you read the question, please?

(Question read by the reporter.)

Trial Examiner Batten: I don't know as there is any evidence here that he had any labor activities.

Mr. Rissman: He testified he was steward of the union. He has testified that he is a member of the union.

Mr. Lamfrom: Thus far those are not activities, those are statutes.

Trial Examiner Batten: Do you mean by that question, the security—I don't know as I quite understand the question. You mean as to whether or not the witness might feel that he could go ahead with his labor activities? Is that what you mean?

Will you read the question once more?

(Question reread by the reporter.)

Mr. Rissman: And future union activities.

1356 Trial Examiner Batten: What you mean by the question is whether or not this witness, as the result of this statement, felt he was at liberty to continue with his labor activities?

Mr. Rissman: I want from this witness the testimony—

Mr. Lamfrom: Now, that is just a little bit too far, what you want from the witness.

Mr. Rissman: (Continuing)—as to what effect this statement of the foreman had upon him in connection with his being a member, a steward of the union, and whether or not in his mind the statement implied that he should not be active on behalf of the union.

Mr. Lamfrom: Sure, that's what you want, but so far you have been unable to get it without telling him to say it.

Trial Examiner Batten: Wasn't the question I asked you a moment ago exactly the information you wanted to know? I mean, the form of my question would give you that information.

Mr. Rissman: He may answer that question?

Trial Examiner Batten: Read what I said back there.

(Record read as follows:

"What you mean by that question is whether or not this witness, as the result of this statement, felt he was at liberty to continue with his labor activities?")

1357 Trial Examiner Batten: Isn't that your question?

Mr. Rissman: Yes, that is part of it.

Mr. Lamfrom: Not quite. Well, go ahead.

Mr. Rissman: He may answer?

Trial Examiner Batten: Will you answer that question?

The Witness: A. State that question again.

Trial Examiner Batten: Read the question to him.

The Reporter: Shall I change it to second person, instead of third?

Trial Examiner Batten: Yes.

(Question read as follows:

"Q. Whether or not you, as a result of this statement, felt you were at liberty to continue with your labor activities.")

The Witness: A. Labor activities?

Q. (By Mr. Rissman) Yes.

A. No, I didn't.

Q. Why not?

A. Well, I didn't know; I might get fired at any time.

Mr. Rissman: Mr. Reporter, will you read the answer, please?

(Answer read by the reporter.)

Q. (By Mr. Rissman) Did Mr. Buuck know at that time that you were a member of the union?

A. I think he did.

1358 Q. Did you wear your button around the plant?

A. At that time, we had no buttons.

Q. Had you ever spoken to him about your membership in the union, or had he ever spoken to you about it?

A. No.

Q. Prior to that time, or at that time, did you do anything to incur the displeasure of Mr. Buuck, your foreman?

A. Yes.

Q. What did you do?

A. Well, I refused to carry these application cards around for the company union.

Q. What else did you do?

A. I guess that's about all.

Q. Did you do anything else, either in the course of your work, or personally, to Mr. Buuck, to incur his displeasure?

A. No.

Mr. Lamfrom: I don't understand who was the person who carried around the application cards for the company union, as you express it.

Mr. Rissman: He said Independent Union.

Mr. Lamfrom: Who was that?

The Witness: I said I refused to carry them.

Q. (By Mr. Lamfrom) Oh, you refused to carry them?

A. Yes.

Q. (By Mr. Rissman) Had he asked you to?

1359 A. He asked me what I was doing about it.

Q. When did he ask you that?

Mr. Engelhard: Just a minute. I object to this form of questioning. Why don't you ask him what Mr. Buuck said, and not his conclusions, as to the interpretation he placed upon the statement?

Q. (By Mr. Rissman) When did Mr. Buuck ask you that?

A. April 16th, I believe the day the application blanks came down.

Q. And what did you say to him when he asked you that?

A. I told him I would do nothing about the formation of that union, and the application blanks.

Q. You are referring now to the Independent Union?

A. Yes, to the company union.

Q. You have testified that Arthur Kane has had conversation with you about union matters. Will you tell us when that conversation was, and what was said?

A. I believe on May 6th, Arthur Kane came to me and told me they were going to dock me for the time I had spent at these meetings for this Independent Union.

Q. And what did you say?

A. I asked him—he told me they were going to dock me ten hours and a half. I asked him who he got the orders from to dock me ten hours and a half. He just said he got the orders from Mr. Harold Falk. I asked him how come
1360 Mr. Falk was docking us for it.

"Well," he said, "it is Meyer Adelman."

It seemed as though he gave those orders down at the meeting at the Eagles' Club.

He said, "It seemed as though that Jew has an awful lot to say around here."

Q. He referred to Meyer Adelman?

A. Yes.

Q. Did you have any other converastion with Mr. Kane on that day, on that occasion?

A. Only I asked him for a list of the hours I had worked during the first part of April and the last part, so I could check up how many hours I had put in.

Q. How many hours pay were you docked from your wages?

A. Ten hours and a half; so he explained. I never could figure it out, according to the way they filled out the check.

Q. (By Trial Examiner Batten) Did you ever make a report to anybody of the amount of time you had spent in these meetings?

A. Well, we punched a blue card every time when we came into the meeting, and turned in the amount of hours that night to the time keeper.

Q. (By Mr. Rissman) There was a separate time card for these meetings?

1361 A. A separate blue card, yes.

Q. Will you tell us what your occupation in the foundry is, Mr. Neal?

A. Well, I am truck driver and handyman around there.

Q. And that work of yours, your work takes you to various parts of the foundry?

A. Yes.

Q. So you don't have one punch, or one machine, like other men might have?

A. No.

Q. Did you ever have any other conversation with foremen or supervisory officials of the Falk Company regarding these same matters?

A. No.

Q. Were you present on May 5, 1937, at the Eagles' Club, at the meeting attended there by representatives of the company and representatives of the union?

A. Yes.

Q. And you saw a transcript taken of the testimony there?

A. Yes.

Q. Did you hear Mr. Meindle's testimony with reference to the people who attended?

A. Yes.

Q. Do you know of any persons in addition to those whom he named who were at that meeting? Did you notice that
1362 he missed any names, that you could think of?

A. Well, he missed Joe Jelly, he missed Richard Falk, I believe.

Q. Who is the first person you mentioned?

A. Mr. Harold Falk?

Q. No.

A. Joe Jelly.

Q. Who was he representing, the union or the company?

A. He was representing the company union.

Q. He was one of the men who later had to leave the room?

A. Yes.

Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Engelhard) Mr. Neal, when did you become a member of the C. I. O.?

A. About the 11th or 12th of April, I don't remember just the day.

Q. Well, did you become a member of the C. I. O. on the day this meeting was held in the basement of the hospital?

A. No, I believe it was the 11th of April.

Q. It was the day before, wasn't it? What's that?

A. I believe it was the 11th of April.

Q. That was a Sunday, wasn't it?

A. Yes.

Q. That was the day the charter was granted to your
1363 union, according to Mr. Meindle's testimony this afternoon? I am just trying to fix the date in your mind. You joined it at that Sunday meeting?

A. Yes.

Q. And thereafter, the next day, you say you attended this meeting of the 12th?

A. Yes.
Q. You were then a member of the C. I. O.?
A. Yes.
Q. And you say you attended that meeting of the 13th?
A. Yes.
Q. Two meetings on the 13th?
A. Yes.
Q. Did you attend any other meetings thereafter?
A. I attended a meeting on the 14th.
Q. Where was the meeting of the 14th held?
A. Beneath the hospital.
Q. That is on Wednesday of that week?
A. Yes.
Q. Who was at that meeting?
A. Well, there was Robert Gillett, Frank Russetti and myself went down there expecting to meet at 12:30, and when we got there we had to wait there maybe two hours before these fellows came back from the lawyer with the information they had.
1364 Q. That was on the 14th, now, you are certain about that?
A. I wouldn't say, I wouldn't swear it was exactly on the 14th, but it was the last meeting I was to.
Q. Well now, let's get back again. You attended a meeting on the 12th?
A. Yes.
Q. There was one meeting that day?
A. One meeting.
Q. In the basement of the hospital?
A. Yes.
Q. That is correct?
A. Yes.
Q. And you had a meeting—two meetings on Tuesday, the 13th, according to your testimony?
A. I believe so.
Q. Is that correct?
A. I believe so.
Q. What was that?
A. I believe so.
Q. And when were they held, morning or afternoon?
A. Afternoon.
Q. Both in the afternoon?
A. Yes.
Q. Then you say there was another meeting on the 14th?

A. Yes.

1365 Q. I am asking you who was present at the meeting of the 14th.

A. Well, all the members of the Works Council, former members of the Works Council, and some other men that had been called in.

Q. Was Mr. Falk there?

A. No.

Q. There is no doubt then in your mind that you attended four meetings?

A. Yes.

Q. No doubt at all?

A. No.

Q. You have the distinct recollection now of attending four distinct meetings on the 12th, the 13th and the 14th?

A. I think so.

Q. Of April. And you have a distinct recollection that Mr. Falk was present at each of those meetings except the one of the 14th?

A. Yes—not at the first meeting of the 13th, he wasn't at that meeting.

Q. Oh, he wasn't at that meeting. But you say he was at the second meeting on the 13th?

A. He was at the second meeting.

Q. That was when on that day, at what time?

A. Approximately 3:30 or a quarter to 4:00.

1366 Q. That is when it started?

A. Well, it started about 3:30, I imagine.

Q. When did the first meeting start?

A. 12:30.

Q. And you stayed in continuous session from 12:30 to what time?

A. Oh, maybe 3:00 o'clock, or a quarter after 3:00, something like that.

Q. When did the second meeting start?

A. About 3:30 or twenty minutes of 4:00.

Q. And when did that end?

A. Around 4:30.

Q. And when did the meeting of April 14th start?

A. 12:30, that is when we got there.

Q. Yes. And when was that meeting on the 14th over?

A. In the neighborhood of 4:30.

Q. Who was chairman of the meeting on the 14th?

A. John Wolf.

Q. Who was chairman of the first meeting on the 13th?
A. I believe John Wolf.
Q. And who was chairman of the second meeting on the 13th?
A. I believe John Wolf.
Q. And who was chairman of the first meeting on April 12th?
A. John Brever.
1367 Q. Did you chip in a dollar?
A. Yes.
Q. In spite of the fact that you already were a member of the C. I. O.?
A. Yes.
Q. You chipped in a dollar?
A. Yes.
Q. What was the purpose of chipping in this dollar?
A. At that time, I thought maybe we could get an organization that was not controlled by the company.
Q. At what time, with reference to these four meetings that you have testified about did you ship in your dollar? Was that during the first meeting, or at the last?
A. I believe it was the meeting of the 13th, the second one.
Q. It was the meeting of the 13th?
A. Yes, the second meeting.
Q. The second meeting. Then up to the time you chipped in your dollar, you didn't think that the union that was being organized, that you say was being organized then, was a company-controlled union?
A. Well, I thought maybe we might get the men to leave the company out of it, and go ahead and join the union, get an independent union.
Q. And you still took part in the meeting of the 14th,
1368 as you say?
A. Yes.
Q. At that time, you were not wearing your C. I. O. button, were you?
A. We had no button.
Q. When did you start wearing the C. I. O. button?
A. Sometime in May.
Q. In May?
A. Yes.
Q. No one ever objected to you wearing that button?
A. No.
Q. You still wear it?

A. Yes.
Q. You did so fearlessly?
A. No.
Q. Well, all right. What do you mean, if you say you didn't wear it fearlessly?
A. Well, I found out the law would protect us in our union activities.
Q. (By Mr. Lamfrom) You mean you didn't have any fear in wearing it?
A. I told him I didn't have any fear.
Q. (By Mr. Engelhard) That is what I asked you before, whether you wore that fearlessly, and you said "no." Now, you say you did wear it without fear.
1369 Mr. Lamfrom: That is when he meant.
Mr. Engelhard: Yes.
Q. (By Mr. Engelhard) That is correct, Mr. Neal, isn't it?
A. Yes.
Q. You were not afraid to wear your C. I. O. button?
A. No.
Q. You were not afraid to engage in any of your duties as a member of the union?
A. Not at that time, not in May.
Q. What was that?
A. Not in May.
Q. Not in May. You were not afraid to engage in any of your duties as a steward?
A. No, not in May.
Q. Not in May. When did you become afraid to engage in any of your duties as a member of the union?
A. It was explained to me during the month of April that the law would protect us.
Q. Yes.
A. And from that time on, I lost some of that fear.
Q. Well, you never had any fear after you joined the C. I. O., did you?
A. Well, probably for the month of April I did.
Q. Fear of what?
A. Well, I didn't know but what I might lose my job.
1370 Q. Did anybody ever say to you that you would lose your job for going into the C. I. O.?
A. Ham Buuck just said he felt sorry for me.
Mr. Engelhard: I move to strike that out.
Mr. Rissman: That is entirely responsive.

Mr. Engelhard: I move the answer be stricken.

Trial Examiner Batten: I think the question was whether anybody had said to him that he would lose his job. I think that answer is responsive.

Mr. Engelhard: May I ask that the question be read?

Trial Examiner Batten: Read the question.

(Question read by the reporter.)

Mr. Engelhard: It seems to me there is a simple question to be answered, whether anybody ever said to him that he would lose his job for going into the C. I. O. I think it is simple.

Read the answer, please.

(Answer read by the reporter.)

Mr. Rissman: I think that is responsive.

Mr. Lamfrom: That is not an answer to that question.

Mr. Engelhard: It is not an answer to the question.

Mr. Rissman: I think it is the proper answer.

Q. (By Trial Examiner Batten) Did anyone ever tell you specifically that you would lose your job as the result of being a member of the C. I. O.?

1371 A. No.

Trial Examiner Batten: I think that answers it.

Mr. Engelhard: That is the answer I intended to get, that is, if it were the truth, which I assume now.

Trial Examiner Batten: I think we will recess for five minutes.

Have you any objection to recessing at this time?

Mr. Engelhard: You mean I?

Trial Examiner Batten: Yes.

Mr. Engelhard: No.

Trial Examiner Batten: It is about halfway between beginning and ending, I assume.

(A short recess was thereupon taken.))

Trial Examiner Batten: You may proceed, gentlemen.

(Record read by the reporter.)

Q. (By Mr. Engelhard) Now, Mr. Neal, the conversation that you had with Mr. Buuck,—is that his name?

A. Buuck.

Q. Buuck?

A. Buuck, that's it.

Q. That did not cause you to change your affiliation, did it?

A. To change my affiliation? What do you mean?

Q. With the C. I. O.

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A. No.

1372 Q. It didn't interfere with your freedom to choose any labor organization you wished to belong to?

A. It didn't me, no.

Q. It didn't interfere with your freedom to choose a collective bargaining agency?

A. No.

Q. It didn't interfere with your freedom in any manner whatsoever, did it?

A. Well, after that, I was careful not to speak to Mr. Buuck for some time.

Q. You have spoken to him, however, since then, haven't you?

A. Yes.

Q. It didn't interfere in any way with any of your rights under the law as a member of the C. I. O., did it?

A. I don't believe it interfered with my rights any, no.

Q. The conversation that you had with him was a private conversation between you and him?

A. Yes.

Q. What he said to you wasn't overheard by anyone else?

A. No.

Q. And the conversation you had with Mr. Kane, was that a private conversation, too?

A. Yes.

Q. It didn't interfere with anyone else?

1373 A. No.

Q. Did Mr. Kane's conversation in any way influence you with regard to your loyalty to the C. I. O.?

A. No, not at that time.

Q. What was that?

A. No, not at that time.

Q. Well, did it ever influence your loyalty to the C. I. O. since that time?

A. No.

Q. That didn't interfere with your freedom of choice to belong to any labor union you pleased?

A. No.

Q. It didn't coerce you to do anything?

A. No, not me.

Q. It didn't intimidate you to do anything?

A. No.

Q. You pursued the same course that you had pursued before so far as your affiliation with the C. I. O. was concerned?

A. Yes.
Q. You didn't in any way attempt to conceal from anyone the fact that you were a member of the C. I. O.?
A. I never did, no.
Q. In response to a question put to you by the Board counsel you stated that you thought Buuck knew you were a member of the C. I. O.?
1374 A. Yes.
Q. You wore a button, didn't you.
A. We had no buttons at that time.
Q. When did you have the conversation with Buuck?
A. On April 23rd.
Q. And at that time, of course, you had no button?
A. No.
Q. Well, you don't know at this time, do you, whether Buuck knew that you were a member of the C. I. O. on April 23rd?
A. Well, everybody around the foundry, I figured, knew I was a member of the C. I. O., that I was a steward.
Q. That you were a steward?
A. Yes.
Q. But you don't know whether or not Buuck knew it?
A. Well, I am pretty sure he did. There is very little he don't know.
Q. What's that?
A. There is very little he don't know, that is known around the foundry as well as that was.
Q. Well, you didn't tell him?
A. I didn't tell him myself, no.
Q. And he didn't ask you?
A. He didn't.
Q. Whether you were a member of the C. I. O. You stated something about refusing to carry around application blanks?
1375 A. Yes.
Q. You say that occurred on April 16th?
A. Yes.
Q. Did you have application blanks?
A. No. I was asked by Stanley Adamski to go to Mr. Bryce's office and get them in the evening when I came to work, he told me to go over before Bryce closed the office and went home.
Q. And you didn't do that?
A. I didn't do that.
Q. You say he talked to you about that?

A. Later on in the night he came around and asked me what I was going to do if I got my application card, and why I didn't get it.

Q. What did you say?

A. I told him I would have nothing more to do with it.

Q. Then what did he say?

A. He didn't say anything. He just refused to speak to me then for maybe three weeks, unless he just had to speak to me.

Q. You don't know why he didn't talk to you for about three weeks?

A. I don't.

Q. Did he have any occasion to speak to you during those next three weeks?

1376 A. He always did speak to me when he passed me, gave orders.

Q. Didn't he give you any orders?

A. He didn't.

Q. During the three weeks?

A. He didn't.

Q. Who gave you the orders?

A. The other foremen.

Q. Was he on the job?

A. Yes.

Q. Is Kane your foreman?

A. Yes.

Q. He told you that you were going to be docked ten and a half hours?

A. Yes.

Q. Did you make a protest?

A. I asked him who gave orders to that effect.

Q. I didn't ask you that. I said, did you protest at being docked.

Mr. Rissman: I object. He can state what he said. He doesn't know whether he protested or not.

Trial Examiner Batten: The question is, whether he protested. Now, he states whether or not he made a protest.

Mr. Rissman: A protest or objection might be all the same. Let him state what he said.

1377 Mr. Lamfrom: The shoe is on the other foot as to conclusions now, you see, only this is cross-examination.

Mr. Rissman: That's right.

Q. (By Trial Examiner Batten) Did you protest to Mr. Kane about the deduction?

A. Yes.
Q. What did you say?
A. I asked him who gave him orders, and he said Mr. Harold Falk issued the orders. He said that he believed that Mr. Falk would be willing to pay it, but it seemed as though this Adelman, this Jew, had given orders that he wasn't allowed to pay them, pay for those meetings.
Q. (By Mr. Engelhard) I am asking you now whether or not you said anything further about not being willing to have this money deducted.
A. Not that I remember of.
Q. You accepted the deduction, didn't you?
A. Yes, there was no other choice.
Q. Why do you say that?
A. Well, I had nobody—I had no way of collecting it.
Q. You say that you punched out a blue card whenever you went to these meetings?
A. Yes.
Q. And punched the blue card when you came back from the meeting?
1378 A. I punched a blue card when I came down. I worked nights. When I came in to go to the meeting, I punched the card, and marked it; and when I left, I punched the card again.
Q. You punched it when you went to work?
A. To the meeting.
Q. Your blue card, isn't that your regular employment card, your time card?
A. No.
Q. What color was your regular time card?
A. It was yellow.
Q. And so, when you went to a meeting, you punched out on a blue card?
A. And punched in.
Q. And when you came back from the meeting, you punched in on the blue card?
A. Yes.
Q. Then did you again punch your yellow card?
A. No, not for the meetings.
Q. Well, would your yellow card show how many hours you were at work?
A. Yes.
Q. You punched when you went to work on your yellow card?

A. Yes, when I went to work.
Q. Did you punch out on your yellow card when you went to a meeting?
1379 A. No, not when I went to a meeting.
Q. And you punched the yellow card then at the close of the work day?
A. Yes.
Q. So that the yellow card would show that you worked from the time you punched in until the time you punched out?
A. It would also show the hours I spent at the meeting.
Q. How would the yellow card show that?
A. Well, the timekeeper would mark the hours on there.
Q. From what?
A. From the blue card.
Q. You are a night man, aren't you?
A. Yes.
Q. What hours do you work at night?
A. From 5:30 at night until 5:00 o'clock the next morning.
Q. Did you ever attend any of these meetings during your working hours?
A. No.
Q. Did you get a check for the time that you attended the meetings?
A. Yes, that was all the same check.
Q. A separate check?
A. It was all the same check that I got paid for it.
1380 Q. That is, you say then you got the check for the number of hours your worked, that would be shown on the yellow card?
A. Yes.
Q. And it also showed on the blue card the number of hours you attended meetings?
A. Yes.
Q. And those two time cards would be added together?
A. Yes.
Q. That is the amount of time?
A. Yes.
Q. And you received a check for the total amount of the yellow and the blue cards?
A. Yes.
Q. Is that correct?
A. On one check.

Q. Then you were given a deduction later on?

A. The next pay I was deducted, that would be May 7th, I got the check where it was deducted.

Q. Now, you testified that as early as April 8th, 1937, at the last meeting of the Works Council, a discussion was had regarding the formation of an independent union?

A. Yes.

Q. And you testified that at that meeting Mr. Falk talked about an independent union?

A. He talked about something to take the place of the
1381 Works Council.

Q. And just what did he say about the something to take the place of the Works Council?

A. Well, Stanley Adamski asked him if he meant to form an independent union, and he said yes, that he believed he did.

Q. Mr. Falk, in answer to Mr. Adamski's question, said that he, Mr. Falk, intended to organize an independent union?

A. He didn't say he did. He said he aimed for the men to.

Q. What's that?

A. He didn't exactly say he did. He said he aimed for the men to. That was the intention.

Q. Did Mr. Falk say that he aimed for the men to form an independent union?

A. Well, he answered Adamski's question with "yes", when Adamski asked him if he intended for us to organize an independent union to take the place of the Works Council.

Q. What did Mr. Falk say about the organization of an independent union?

A. Well, he said it was against the law he believed, for him to say anything.

Q. What was the question that was put to him?

A. Mr. Adamski asked him if he—if it was his intention r us to form some kind of an organization to take the place of the Works Council. Mr. Falk said yes, he believed
1382 it was, if he was permitted to say that.

Q. Was there anything else said about an independent union at that meeting?

A. Well, they went ahead and made arrangements.

Q. Just a minute. I can't hear you. Talk a little louder.

A. We asked Mr. Falk if it would be all right to hold a meeting on the company property.

Q. That was the meeting of the 8th?

A. Yes.
Q. Who asked him if it would be all right?
A. I don't remember.
Q. What's that?
A. I don't remember just who asked him that question.
Q. But you say that that question was asked by somebody of Mr. Falk?
A. Yes.
Q. Whether it would be all right for the men to hold that meeting on company property?
A. For the members of the Works Council, and former members of the Works Council.
Q. What did Mr. Falk say to that question?
A. He said he believed it would, he didn't see any—he didn't know that there was anything in the law that would forbid them to hold those meetings to make arrangements for that on company property, but after it was organized,
1383 they would have to hold their meetings outside.
Q. Mr. Falk said that?
A. Yes.
Q. Who would have to hold their meetings on the outside?
A. The organization that was formed to take the place of the Works Council.
Q. Was there anything else said at the meeting on the 8th about an independent union?
A. Well, they discussed it. Mr. Falk said—
Q. Just tell me what was said.
A. Mr. Falk said that he would try to get the information as to how it can be done, how it could be done.
Q. Mr. Harold Falk said that?
A. Yes.
Q. From whom did he say he would get the information?
A. He didn't tell us.
Q. But he said he would get the information as to what could be done?
A. As to how we could form some kind of an organization to take the place of the Works Council.
Q. Was anything further said?
A. Well, it was suggested just when that meeting should be, and Mr. Falk didn't know just when it would be he could get the information.
Q. Who asked Mr. Falk as to when the meeting should be?
1384 A. Well, I don't know as anybody asked Mr. Falk when it would be.

Q. Did he volunteer the matter of when the meeting should be held?

A. They asked him if they could hold a meeting.

Q. We have already covered that. I am asking you what Mr. Falk said with regard to the time of the meeting.

A. Mr. Falk had nothing to do with the time of the meeting at that time.

Q. Who discussed the time of the meeting?

A. Well, it was discussed among the men.

Q. While Mr. Falk was there?

A. Yes.

Q. Did he have anything to say about the time of the meeting?

A. He didn't at that meeting.

Q. Did he at any meeting?

A. No, not only at the second meeting of the 13th, when he suggested that we call a meeting again.

Q. I am speaking of this meeting of the Works Council of April 8th, and this questioning that I have been indulging in was with regard to the meeting of April 8th, the last meeting of the Works Council.

A. Yes, I understand that.

Q. You understood that, did you?

1385 A. I understand that.

A. Yes.

A. But you asked me if he had anything to say about the time any meeting was called, or something to that effect.

Q. Yes.

A. And there was more than one meeting.

Q. Did he have anything to say about the time of the meeting that was held on the 12th of April?

A. No, he didn't have anything to say about it at that meeting.

Q. Who called that meeting?

A. I was notified by Stanley Adamski.

Q. By word of mouth?

A. By the mouth, yes.

Q. What did he tell you?

A. He told me on Friday the 9th that they had decided to have a meeting Monday at 12:30.

Q. Did he tell you who decided it?

A. He did not.

Q. You had a meeting on the 12th, you say, at which you were present?

A. Yes.

Q. And who from The Falk Corporation attended that meeting on the 12th?

A. Mr. Harold Falk.

1386 Q. Was he the only officer of the corporation?

A. He was the only officer of the corporation that I remember.

Q. You don't remember anyone being there except Mr. Harold Falk?

A. Not of the corporation.

Q. How long was he at that meeting on the 12th?

A. Oh, probably ten or fifteen minutes.

Q. At the beginning, or at the end, of the meeting?

A. Well, towards the end of the meeting.

Q. What did he say at that meeting, did you say?

A. Well, he came in and said he didn't have no information, he couldn't get the information he wanted concerning the forming of this organization.

Q. Do you know how he happened to come to that meeting?

A. Yes. I believe the members of the meeting called him in.

Q. What's that?

A. I believe the members of the meeting asked him in there.

Q. Well, who of the members went to call him?

A. Well, I don't remember just who went.

Q. Mr. John Brever was the chairman of that meeting?

A. Yes.

Q. Do you know whether Mr. Connell was at that meeting?

A. I don't remember Mr. Connell being there.

1387 Q. Do you remember whether Richard Falk was there at that meeting?

A. I don't remember Mr. Richard Falk being at that meeting.

Q. Would you say that he was not at that meeting?

A. I didn't say he wasn't at the meeting.

Q. Well, I am asking you, would you say that he was not at that meeting?

A. I don't believe he was.

Q. You don't believe he was?

A. No.

Q. Would you say that Mr. Connell was at that meeting?

A. I don't remember Mr. Connell being at the meeting.
Q. But you remember what occurred at that meeting?
A. I remember what was said that was of importance at that meeting.
Q. The only important thing you remember of that meeting is what Mr. Falk said, is that correct?
A. Well, no.
Q. How long did that meeting last?
A. Two hours.
Q. And in those two hours, a lot of things were said and done, weren't they?
A. Well, there was quite a bit of argument and discussion.
Q. Mr. Falk, you testified, was there about fifteen minutes.
1388 A. Yes, ten to fifteen minutes.
Q. Do you recall any of the discussion that took place during the hour and three-quarters before he came?
A. Well, I wouldn't say it was an hour and three-quarters before he came.
Q. You said the meeting lasted two hours, and he came during the last fifteen minutes.
A. I said he came towards the end.
Q. How long was Mr. Falk present at that meeting?
A. Oh, from ten to fifteen minutes.
Q. Ten or fifteen minutes. Was he there when the meeting dispersed?
A. No.
Q. You don't know how long after the meeting ended—or before the meeting ended, he left, do you?
A. I don't remember just exactly.
Q. Well now, the men who were at that meeting were in session for at least an hour before Mr. Falk arrived? You would say that, wouldn't you?
A. I would say we were there an hour, yes.
Q. And you might have been in session for as much as an hour and a half before Mr. Falk arrived?
A. No, I wouldn't say that.
Q. Well now, taking the least being an hour, what occurred during that hour?
1389 A. Well, there were several arguments about unions, how we should go about it to form an independent union.
Q. Can you tell me what any particular person at that meeting said during that hour?
A. Well, I remember having a little friendly argument with Stanley Adamski during the first part of the meeting.

Q. You remember that? Your remember that?
A. Yes.
Q. Do you remember anything else that was said by anybody?
A. Well, there was so much said, it is hard to remember it.
Q. Just why do you say you remember what Mr. Falk said?
A. Because I was paying strict attention to what Mr. Falk would say.
Q. Why were you paying strict attention to what Mr. Falk was saying?
A. I wanted to get what information he had, what he wanted done.
Q. Did you make any notes as to what Mr. Falk said?
A. I did not.
Q. When did you refresh your memory as to what Mr. Falk said?
Mr. Rissman: I object. He has not testified that his memory ever failed him about what Mr. Falk said. I object to that question.
Trial Examiner Batten: Well, he may answer that, 1390 if he ever did refresh his memory.
Mr. Rissman: Let him ask that question.
The Witness: I never did refresh my memory.
Q. (By Mr. Engelhard) You knew this all the time?
A. I knew it all the time.
Q. Did you report Mr. Falk's conversation to the members of the C. I. O. at that time?
A. I did not.
Q. When did you report it to the members of the C. I. O.?
Mr. Rissman: I object. There is no testimony that it ever was reported.
The Witness: I reported it that evening to the men in the foundry.
Q. (By Mr. Engelhard) What's that?
A. I reported it that evening to the men in the foundry.
Q. To the men in the foundry?
A. Yes.
Q. Who were members of the C. I. O.?
A. None of them that belonged to the C. I. O. at that time.
Q. What's that?
A. There were not so many that I knew belonged to the C. I. O. at that time.

Q. But you reported what Mr. Falk said at that meeting to the men in the foundry that night?

A. Yes.

1391 Q. Who were some of the men to whom you reported what Mr. Falk said?

A. There were a bunch of men standing in front of the tool crib, tool shed.

Q. Name the men.

Trial Examiner Batten: Let him go ahead, Mr. Engelhard, and name the men.

The Witness: My brother, Grant Neal, and Steve Sustik.

Q. (By Mr. Engelhard) I didn't get that.

A. Steve Sustik. He spells his name "sausage" down there, but he pronounces himself "Sustik"; George Durrell; John Reese.

Q. I didn't get the last name.

A. John Reese; Lloyd Robinson. I believe that's all I remember. There were a bunch of them there, that's all I remember.

Q. You reported the full conversation of what Mr. Falk said at that meeting to those men?

A. Well, I don't remember as I reported the full conversation.

Q. Now, there is not any doubt in your mind that on the 13th, there were two meetings?

A. I believe there was.

Q. What's that?

A. I believe there was.

1392 Q. I am asking you whether there is any doubt in your mind.

A. There is no doubt.

Q. As to whether there were two meetings on the 13th?

A. There is no doubt.

Q. There is no doubt in your mind?

A. No.

Q. You can visualize yourself attending two separate meetings that afternoon?

A. Yes.

Q. What occurred at the first meeting?

A. Well, there wasn't much of anything of any importance, except that they sent over to the office to get Mr. Falk, and he wasn't there, and Richard Falk came down in his place.

Q. That was on the 13th of April?

A. As I remember it, yes.

Q. There isn't any doubt in your mind that Richard Falk appeared on the 13th of April at that first meeting?

A. No.

Q. No doubt in your mind whatever?

A. No.

Q. Who else came in to attend that first meeting, who had any connection with the management?

A. Nobody that I remember.

1393 Q. Except Richard Falk?

A. Richard Falk.

Q. And what did he say?

A. He came down there, and they explained to him that they wanted to know what information they could get—or what information Mr. Falk had got, Mr. Harold Falk, and wanted to know what he knew about it, and he said all he knew about it was that they could incorporate, it would cost them $5.00 to incorporate.

Q. Is that all that Mr. Falk said at that meeting?

A. That's all that I remember.

Q. Is that the only meeting that you remember Richard Falk attended?

A. That's the only one I remember.

Q. You can't remember any other statement that he made to the men of that meeting, except these two sentences, I think, that you said?

Mr. Rissman: I object.

Q. (By Mr. Engelhard) That you can incorporate, and it will cost you $5.00 to incorporate?

Mr. Rissman: I object. There is no testimony that Mr. Falk made any other statements than those two.

Mr. Engelhard: I am asking him whether that's all he can remember.

The Witness: A. That's all I—

1394 Mr. Rissman: There is no testimony that there was any more.

Trial Examiner Batten: I think he is simply asking the witness whether he remembers that was all the conversation.

Mr. Rissman: He has asked him if that's all he can remember, implying there were others.

Trial Examiner Batten: I don't think there is any implication in the thing. The question, to me, is pure and simple, whether he remembers Richard Falk saying anything else on this occasion.

Mr. Rissman: He may ask that question.

Q. (By Mr. Engelhard) Do you remember him saying anything else on this occasion except what you have testified to, that he said you could incorporate, and it would cost $5.00?

A. That is what we were there for.

Q. No, I am asking you, is that all that you remember?

A. That's all that I remember.

Q. That's all you remember Richard Falk having said at that meeting?

A. That's all I remember, yes.

Q. Then you say there was a recess between the first meeting and the second meeting?

A. Yes.

Q. About how long a recess?

1395 A. Well, I would say forty or forty-five minutes.

Q. Then the boys again convened—

A. Yes.

Q. (Continuing)—the meeting?

A. What hadn't went home.

Q. What's that?

A. Yes, what hadn't went home.

Q. You didn't go home, did you?

A. No.

Q. You stayed there?

A. Yes.

Q. Who went home, that you remember?

A. Robert Gillett, one of the night men; and Frank Russetti.

Q. But all of the other men remained who were at the first meeting?

A. That is all I remember that went home.

Q. And when the second meeting convened for the afternoon, then who, representing the corporation, attended the meeting?

A. I believe Mr. Harold Falk was there.

Q. How long was he at that meeting?

A. Oh, five or ten minutes.

Q. And what did he say at that meeting?

A. He explained—they wanted to know what he had learned.

Q. Just tell us what he said.

1396 A. He said he had learned the same thing that Richard had told us, that we could incorporate, would be the quickest way.

Q. What else did he say?

A. That's about all I remember, all I remember him saying.

Q. You don't remember anything else he said, except that you could incorporate, that would be the quickest way?

A. Yes.

Q. Just try to probe your memory now, and see if he didn't say something else? That is, I am assuming that your testimony that he was at the meeting is true.

Mr. Rissman: I object to the question. The witness has testified that's all he remembers that was said.

Mr. Engelhard: I am asking him to probe his memory while he is on the stand, and see if he can't recall anything else that was said by Mr. Falk, or that he claims Mr. Falk said.

Trial Examiner Batten: The statement by counsel, assuming that it is true that Mr. Falk was there, I don't think that is quite the proper statement.

Mr. Engelhard: That part may be disregarded.

Trial Examiner Batten: That part may be stricken.

Q. (By Trial Examiner Batten) The question to you now is, to probe your memory and see whether or not there is any other statement that Mr. Falk made at the second meet-
1397 ing on the 13th that you can now recall.

A. I don't remember anything more that he said at that meeting.

Q. (By Mr. Lamfrom) Did he mention anything about the $5.00, Harold Falk?

Mr. Rissman: Well, just a minute. Who is examining here?

Mr. Lamfrom: That is just a matter of my own personal inquiry.

The Witness: A. No. That was all that was said about the $5.00.

Q. (By Mr. Engelhard) I take it, then, that that is the best recollection you have of what occurred at that second meeting on the 13th, that Mr. Falk merely said, "The thing to do is to incorporate."

A. Yes.

Q. That's all you remember him saying?

A. Well, that's all of any importance that was said.

Q. Well, did he say anything that was important?

A. I don't remember that. There was so much said that was not important at those meetings.

Q. Just how do you arrive at the conclusion that a particular thing that he said was important, or not important?

Mr. Rissman: I object to that question.

Mr. Engelhard: I would like to know what he means
1398 by "important".

Trial Examiner Batten: I think he may answer that question.

He says he remembers the important things, and not the unimportant. The witness may state how he distinguishes between those things.

The Witness: A. We were there to form an organization of some kind to take the place of the Works Council. We were to get advice from Mr. Harold Falk, and I think that that is what our business was there, and that is the important thing at the meeting, as to how it was to be done, and when we could do it.

Q. (By Mr. Engelhard) Did Mr. Falk, at any of the meetings, discuss the provisions of the Wagner Act?

A. No, he did not.

Q. Or the provisions of the Severson Act?

A. He didn't, that I remember.

Q. I am speaking now of Mr. Harold Falk.

A. Yes.

Q. Did Richard Falk at any time discuss the provisions of the Wagner Act?

A. Well, he might have partly discussed it.

Q. I am asking you whether he did.

A. Not that I remember.

Q. Did he at any time discuss the provisions of the
1399 Severson bill?

A. Not to me, no, not at the meeting.

Q. Not while you were at any of these meetings?

A. No.

Q. You don't remember whether that occurred or not?

A. It didn't occur when I was at the meeting.

Q. You attended all of those meetings, didn't you?

A. I attended those.

Q. On the 12th, the 13th, and the 14th?

A. Yes.

Q. You were there from the time they started until they closed?

A. Yes.

Q. You are sure of that?

A. Yes.

Q. And if, at those meetings, Richard Falk said anything

about the Severson bill, you would have heard it, wouldn't you?

A. Well, I wasn't there to learn about the Severson bill.

Q. That is not what I asked you. I said, if he had discussed with the men the provisions of the Severson bill, you would have heard it, wouldn't you?

A. I might have heard it, but I didn't remember it.

Q. You don't remember it?

A. No.

1400 Q. At this time, you cannot recall any conversation of any kind by Richard Falk, regarding the Severson bill?

A. No.

Q. Do you recall either of the two being asked at any of these meetings, "How many does it take to incorporate?"

Mr. Rissman: Either of what two?

Mr. Engelhard: Any one of the two, either Mr. Harold Falk, or Richard Falk.

The Witness: A. Mr. Richard Falk said, "It takes three to incorporate, to sign the incorporation papers."

Q. (By Mr. Engelhard) Did anyone ask him how much money it costs to incorporate?

A. I don't believe they did. I believe he stated that himself.

Q. You testified that he said it would cost $5.00?

A. Yes.

Q. To incorporate?

Trial Examiner Batten: He just said Mr. Falk volunteered that information.

Mr. Engelhard: Yes, that's what I say he already testified.

Q. (By Mr. Engelhard) Now then, you say that on the 14th of April, another meeting took place?

A. Yes.

Q. Of that you have no doubt?

1401 A. No, I have no doubt.

Q. And that meeting took place in the basement of the hospital?

A. Yes.

Q. And all of the men were present at that meeting who were present at the other?

A. Well, as I recollect, they were all present.

Q. And who, from the management department of the corporation, were present?

A. I don't believe there was anybody from the manage-

ment, except one fellow that came down from the drafting department of the office and asked if he might stay. He said that he had authority to discharge the men.

Q. At that meeting, he said that he had authority to discharge the—

A. Yes.

Q. (Continuing) —to discharge the men?

A. Yes, as I remember it.

Q. Who was this man from the drafting department?

A. I don't know; he is a short, heavy-set fellow.

Q. Did he stay at the meeting?

A. He stayed at the meeting.

Q. You don't know his name?

A. No.

Q. What was that meeting on the 14th?

1402 A. Well, it was to find out what the fellows had done when they went to see the lawyer, they wanted to make a report on that.

Q. How long did that meeting last?

A. Well, I went to the meeting, I went down there at 12:30, I went down in the basement, and there was nobody come. We laid down there, that is, Gillett and Russetti and myself, stayed down there for some time, and part of them went outside, and I stayed down there a while, and got tired of waiting, and I went outside.

I don't remember just exactly how long we did wait, something close to two hours.

Q. That was the afternoon of the 14th?

A. Yes, sir.

Q. And of course, about that, you have no mistake, you are not mistaken?

A. No.

Q. You say it was at that meeting that a committee of three were appointed to hire a lawyer?

A. They were appointed the day before, the 13th.

Q. They were appointed the day before?

A. Yes.

Q. At which meeting of the 13th?

A. At the second meeting.

Q. Was that the meeting to which Mr. Falk, you say, came?

1403 A. Yes.

Q. Were they appointed before Mr. Falk came?

A. No.

Q. After Mr. Falk—

A. Yes.

Q. (Continuing) —had attended that meeting?

A. Yes.

Q. Was there anything said to Mr. Falk, or by Mr. Falk, about a lawyer, at that meeting?

A. No.

Q. Now, at the meeting of the 14th, what occurred?

A. Well, they reported that they had went down and secured a lawyer, or they went down to see this lawyer that they had secured the day before, and reported what they had done.

Q. What was the report?

A. Well, they reported that the lawyer was fixing the incorporation papers, or had fixed them.

Q. Tell me, who made the report, and what did he say when he made the report?

A. The committee that came back, the committee of three.

Q. The three men didn't talk at once; did they?

A. No, but John Wolf was the chairman of them, he talked, and Greget talked.

Q. And who else talked?

A. Well, it seems as though there were several fel-
1404 lows went down there at the place that I didn't know about, didn't know they were even going. Several of them had something to say.

Q. What was the report, that was made?

A. Well, they just reported that they had fixed papers for incorporation, and that they would see about getting application blanks, and I don't remember just what.

Q. Whom did they report had been hired as a lawyer?

A. Mr. Burke.

Q. Do you know how many men, was it reported how many had gone to Mr. Burke's office?

A. Not that day at the meeting, no.

Q. Were you present when John Wolf appointed the committee consisting of three men?

A. Yes.

Q. Did you hear John Wolf give any instructions to this committee of three?

A. Well, it was generally understood.

Q. I asked you whether you heard John Wolf give any instructions to this committee of three.

Mr. Rissman: I object to the question. He may ask for any conversation, or statements by Mr. Wolf. Whether or not they were instructions will appear from the statements.

Trial Examiner Batten: I think the witness may answer whether he heard Mr. Wolf give any instructions.

1405 The Witness: A. No, I didn't hear Mr. Wolf give instructions.

Q. (By Mr. Engelhard.) You say now you didn't hear Mr. Wolf give any instructions to the committee of three to go to see Mr. Falk?

A. No.

Q. Is that correct? Is that your answer?

A. That's right.

Q. Then, all the men, you say, who were there, knew that this committee of three was to call on Mr. Falk?

A. Yes.

Trial Examiner Batten: I don't recall that he knew that.

Q. (By Mr. Engelhard.) It was generally understood that all the men there knew this committee was to call on Mr. Falk, is that right?

A. Yes, it was generally understood they were to call on Mr. Falk.

Q. Why was it understood that this committee of three were to call on Mr. Falk?

A. Because that is the plan they had talked over.

Q. The men who had attended that meeting?

A. Yes.

Q. And that meeting was on what date?

A. The 13th.

1406 Mr. Rissman: He has answered that four times, if the Examiner please.

Trial Examiner Batten: He may answer.

Q. (By Trial Examiner Batten.) What was it?

A. The 13th.

Mr. Engelhard: The 13th. I think that's all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I don't think I have anything.

Redirect Examination.

Q. (By Mr. Rissman.) Mr. Neal, you mentioned Mr. Bryce's name. Who is Mr. Bryce?

A. Well, he is a fellow that works in the foundry office, I don't know in what capacity.

Q. What kind of work does he do, do you know?

A. Well, all I know he does, he has something to do with the credit union. I don't know what office he holds there.

Q. What kind of work does he do? Is he a clerical worker in the office of the foundry?

A. He is a clerical worker, yes.

Mr. Rissman: That's all.

Mr. Lamfrom: I didn't want you to forget that Mr. Falk is here, if you want to ask him that question, unless you want to ask the witness some questions.

Trial Examiner Batten: No, I have no questions to ask the witness. That's all, Mr. Neal.

1407 (Witness excused.)

Trial Examiner Batten: Mr. Falk, I wonder if you will take the stand once more?

HAROLD S. FALK, a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Examination by the Chair.

Q. (By Trial Examiner Batten.) Mr. Falk, I have requested that you return because, when you were on the stand the other day, there was a question I meant to ask you, and neglected to do so.

It is with respect to Mr. Kinch, whether or not his employment record is such with your company that you would not give any consideration to his reinstatement.

Now, my reason for that question is, it appears that Mr. Kinch has not directly requested you for reinstatement, and my question is, is his record such that the company could not give any consideration to his reinstatement?

A. Why, I feel, Mr. Batten, that if Mr. Kinch could be reinstated, that a good many of the men would feel somewhat disappointed, if he came back, many of them have expressed that opinion to me, in my wanderings about the shop, talking with them.

I don't think it would add anything to the morale and
1408 the harmony of our institution if he came back.

Q. Well, of course, I am not so much interested in that. I think that answers my question rather indirectly.

The thing I was concerned about is, is his record such with your company that you do not feel that you should give any consideration to his reinstatement?

Now, as to the reasons, I think the answer you gave me was more in the form of your reasons.

Am I correct in assuming from your answer that you would not care to give consideration to his reinstatement?

A. Yes, sir, that's right.

Trial Examiner Batten: That's all.

Mr. Rissman: In connection with that:

Redirect Examination.

Q. (By Mr. Rissman.) By his record, in response to Mr. Batten's question, you referred to the activities of his, you spoke about when you were on the stand before, Mr. Kinch's activities in the plant?

A. Just what do you refer to there, Mr. Rissman?

Trial Examiner Batten: I think that is pretty clear, Mr. Rissman.

Q. (By Mr. Rissman.) You don't mean his work record?

A. That has a good deal to do with it, too, from that time on, yes.

Q. Was his record of work, his production record, 1409 if there is such a record for him, a factor in the reason for his discharge?

A. I will say "yes".

Q. In what sense?

A. I think he became very much less co-operative at that time than he had been previously.

Q. Co-operative with fellow-workers?

A. With his fellow-workers, yes.

Q. But as to the quality of his workmanship, have you any opinion, or do you have any knowledge as to that?

A. Not any way direct.

Mr. Rissman: That's all.

Trial Examiner Batten: That's all.

Mr. Lamfrom: That's all.

(Witness excused.)

Trial Examiner Batten: We will adjourn until 9:30 tomorrow morning.

(Whereupon, at 9:12 o'clock p. m., Thursday, August 19, 1937, the hearing was adjourned to 9:30 o'clock a. m., Friday, August 20, 1937.)

1413 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
* * (Caption—XII-R-85 and XII-C-57) * *

Room 409, Milwaukee County Courthouse,
Milwaukee, Wisconsin.
Friday, August 20th, 1937.

The above entitled matter came on for further hearing, pursuant to adjournment, at 9:30 o'clock A. M.

Before:

James C. Batten, Trial Examiner.

Appearances:

Robert R. Rissman and S. G. Lippman, Attorneys, on behalf of the National Labor Relations Board.
A. G. Goldberg, 511 Warner Building, Milwaukee, Wisconsin, appearing for International Union of Operating Engineers, Local 311.
Giles F. Clark, of Alexander, Burke & Clark, 110 East Wisconsin Street, Milwaukee, Wisconsin, appearing for Independent Union of Falk Employees.
Lamfrom, Tighe, Engelhard & Peck, by Mr. Leon B. Lamfrom, and Mr. A. J. Engelhard, appearing for The Falk Corporation.

1414 PROCEEDINGS.

Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

Mr. Rissman: Mr. Landry.

HAROLD LANDRY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name please.
A. Harold Landry.
Q. Are you employed by The Falk Corporation?

A. I am.
Q. How long have you been employed there?
A. About 12 years now.
Q. And in what department are you now employed?
A. The machine shop.
Q. What kind of work do you do there, Mr. Landry?
A. Operate a boring mill.
Q. How long have you been engaged in that operation?
A. Oh, I judge about eight years, something like that.
Q. Are you a member of any labor organization?
A. The C. I. O.
Q. The Amalgamated Association of Iron, Steel and Tin Workers?
1415 A. That is right.
Q. How long have you been a member?
A. I couldn't tell you the exact date: Some time the week starting April 11th, I believe was the week.
Q. 1937?
A. Correct.
Q. Are you an officer of that union?
A. I am.
Q. What office do you hold?
A. President.
Q. Were you the first president elected?
A. No.
Q. When were you elected, or how long have you been president?
A. I believe April 25th, something like that.
Q. Have you been in the courtroom all the time that this hearing has been going on?
A. I believe I have.
Q. And you have heard the testimony of other witnesses?
A. Yes.
Q. Do you recall the testimony of witnesses with reference to the occasion in 1933 when Mr. Harold Falk spoke to employees in the plant on the 16-foot boring mill?
A. I believe I do.
Q. Were you present at that time?
1416 A. I was.
Q. I mean in 1933.
A. Yes, sir.
Q. Is your recollection of his statements the same as the testimony you heard here?
Mr. Lamfrom: Objected to as incompetent, irrelevant and

immaterial, for the same reasons as the testimony of the witnesses referred to was objected to.

Trial Examiner Batten: The objection will be overruled and the testimony accepted for the same reason as the others, as to indicate the history of the labor relations in the plant.

Mr. Engelhard: Your Honor, I wish to interpose an objection that it is improper to ask a witness whether his testimony is the same as some other witnesses'.

Trial Examiner Batten: You may proceed and have the witness testify to all the facts.

Mr. Rissman: Yes, sir.

Q. (By Mr. Rissman.) Directing your attention to that statement made by Mr. Falk in 1933, would you tell us what he said?

Mr. Lamfrom: It will be understood, I presume that my objection—

Trial Examiner Batten: Yes.

Mr. Lamfrom: (Continuing.) —goes to the same line of evidence, all through this witness' testimony?

1417 Trial Examiner Batten: Your objections may stand to all of the testimony with respect to matters prior to—

Mr. Rissman: 1937?

Trial Examiner Batten: (Continuing.) —1937, that is the time that the testimony refers to the issues of this case.

Mr. Lamfrom: And particularly to the time so far remote from 1937 as is 1933.

Trial Examiner Batten: You may have that objection, a continuing objection.

Mr. Lamfrom: That's right.

A. As I recollect it, Mr. Falk appeared, to give us a talk at the 16-foot mill at eleven o'clock, or ten thirty, something like that, in the evening, a day or so after Mr. Hydar had given us a talk, urging us to vote and elect officers for this Works Council, and the men had done the opposite, and voted for Federation of Labor men, outside, and Mr. Falk—

Mr. Lamfrom: Just a minute, if the Examiner please. He is not relating the conversation. He is relating incidents which seem to be quite fresh in his mind concerning the conversation and what preceded it. That answer is not responsive to the question.

Trial Examiner Batten: Mr. Landry, will you tell us just what Mr. Falk said at this meeting.

Mr. Lamfrom: I move that the answer up to date,

1418 in so far as it is immaterial and not responsive to the question, be stricken.

Trial Examiner Batten: In so far as it is not responsive, it may be stricken.

Q. (By Mr. Rissman.) What did Mr. Falk say?

A. He said in substance that they are going to have another election, and not to waste our time voting for outside union men, that it was restricted to men employed in the shop, I believe it was a year, and that any ballots cast for persons not employed there would be thrown away.

Q. You say Mr. Falk said there would be another election?

A. Yes.

Q. Had there been an election for Works Council representatives before this occasion?

A. I believe so.

Q. Do you know, or did Mr. Falk state, or Mr. Hydar, why it was necessary to have another election?

A. Because the majority of the men, it seemed voted the wrong way in their estimation.

Mr. Lamfrom: Just a minute. Are you repeating what Mr. Hydar said?

Mr. Rissman: He is repeating at that time what he said.

Mr. Lamfrom: Or what you think?

The Witness: I am giving my own recollection.

Trial Examiner Batten: What was the answer?

1419 (The answer was read.)

Trial Examiner Batten: What was the question?

(The question was read.)

Q. (By Trial Examiner Batten.) Did either one of these men ever state why it was necessary to have another election? I mean, did they state?

A. I thought it was answering it. They didn't, to my—

Q. I don't care what you think, Mr. Landry. I am asking you, did either one of these men say it was necessary to have another election?

A. The fact that they had, I believe, speaks for itself.

Mr. Lamfrom: Now, there you are.

Trial Examiner Batten: Will you strike that answer, please?

Q. (By Trial Examiner Batten.) Did either one of these men ever say that, that it was necessary to have it?

A. I don't believe so. I didn't vote.

Q. Do you know why it was necessary to have another election?

A. It was common talk—

Q. You can say yes or no, whether you know.

A. I can't prove it, no.

Q. (By Mr. Rissman.) Was there any discussion among the employees as to why there was a second election?

A. Very much.

1420 Q. What was the discussion?

Mr. Lamfrom: Objected to as being incompetent, irrelevant and immaterial.

Trial Examiner Batten: Overruled. He may answer the question.

A. It was common talk through the shop, and I don't recollect the name of the ballot clerks, but the information came back in that about 90 per cent of the day men had voted for outside representatives, and that appears to be the reason why Mr. Falk came down to re-explain the fact that they could just vote for those in the shop.

Mr. Lamfrom: I move that part of the answer, commencing with the words "it appeared" be stricken.

Trial Examiner Batten: It may be stricken.

Mr. Rissman: Remember, he is relating the discussion.

Trial Examiner Batten: Not when he says "it appears". As long as he states what the employees were talking about, that is perfectly proper.

Q. (By Mr. Rissman.) Mr. Landry, did the employees at any other discussion state that it appeared the reason Mr. Falk wanted another election was because 90 per cent of the votes were for outside representatives?

A. Yes.

Mr. Lamfrom: Objected to for the same reason, and for the additional reason that it becomes even more remote,

1421 speculative hearsay, than called for by the first question.

Q. (By Trial Examiner Batten.) Was that part of the conversation which was passing around in the shop?

A. Yes.

Q. Amongst the employees?

A. Very much so.

Trial Examiner Batten: The answer may stand.

Q. (By Mr. Rissman.) At approximately the same time in the summer of 1933, after the enactment of the N. I. R. A., were there any meetings called for Falk employees by outside labor organizations?

A. Just about the time of this talk that organization meeting was called, I can't give the exact date, at the Waukesha Inn.

Mr. Lamfrom: Now, just a minute. I believe that answer is not responsive to the question.

Mr. Rissman: Make your objection.

Mr. Lamfrom: You asked him whether any meetings were called by outside representatives.

Trial Examiner Batten: I think he said there was a meeting called at the Waukesha Inn.

Mr. Lamfrom: Yes. Is that responsive to the question, "Was there a meeting called by outside representatives?" It seems to me that could be answered yes or no.

Q. (By Trial Examiner Batten.) Who was the meeting called by, do you know?

1422 A. He objected before I could finish.

Q. Do you know who it was called by?

A. Yes, sir.

Q. Who?

A. Local 66, American Federattion of Labor.

Q. (By Mr. Rissman.) That is the International Association of Machinists Union?

A. That's right.

Q. Where is the Waukesha Inn?

A. The north end of 27th Street viaduct.

Q. How far is that from the factory?

A. About half the length of the viaduct, maybe half a mile.

Q. Did Mr. Harold Falk say anything in addition to the fact it was necessary to have another election?

Mr. Engelhard: His testimony was that Mr. Harold Falk didn't say anything like that, that neither Mr. Harold Falk or Mr. Hydar said anything like that. You asked him that, and he said No, they didn't. You are putting it in the question as though that were a fact.

Q. (By Mr. Rissman.) Tell us what Mr. Harold Falk said?

A. He said that they would not bargain, they had had one brush with the union there back some years, and that they would close the doors before they would allow outside unions to come in and tell them how to run their shop.

Q. Were you a member of the Works Council, Mr. Landry?

1423 A. Yes.

Q. How long were you a member?

A. I don't recall exactly.

Q. Were you a member up to the end of the Works Council?

A. No.

Q. During the time you were a member, what department did you represent?

A. Nights, machine shop only.

Q. How did your membership as a representative in the Works Council terminate?

A. I refused the renomination.

Q. Prior to the time you refused the renomination, had you ever left the Works Council, or resigned from its membership?

A. I had tried to.

Q. What do you mean by "you had tried to"?

A. I offered my resignation at a meeting, and they voted not to accept it.

Q. Why did you offer your resignation?

A. Because I was disgusted with it.

Q. With what?

A. The Works Council.

Q. Did you, at the time you offered your resignation, make known to the Works Council the reasons why you were offering it?

A. Yes.

1424 Mr. Lamfrom: Let's fix the time of this. I am a little bit hazy as to just when the gentleman took that step.

A. It is in the minutes. I couldn't give you the date.

Mr. Lamfrom: I know it is in the minutes.

Q. (By Mr. Rissman.) In the minutes of the Works Council?

A. That is right.

Q. (By Mr. Lamfrom.) Give us your best approximation of it.

A. I can't, I couldn't even tell you the year.

Q. And you remember all these other things?

A. I certainly do.

Mr. Rissman: I object to these questions by Mr. Lamfrom. If he has an objection, let him make it. If he wants to cross-examine, he can wait until I am finished.

Trial Examiner Batten: You may proceed.

Q. (By Mr. Rissman.) Directing your attention to April 12, 1937, did you, on that day, attend any meeting at the plant?

A. Yes, sir.
Mr. Lamfrom: What was the date?
Mr. Rissman: April 12th.
Q. (By Mr. Rissman.) What time was that meeting?
A. About 12:30, I believe.
Q. 12:30 in the afternoon?
A. That's right.
Q. How were you notified or advised of that meeting?
A. By my wife.
1425 Q. What time did you get to the meeting, did you say?
A. Around 12:30; I don't recollect exactly.
Q. When you were notified by your wife that you were to go to the meeting, did she give you any reason why you were to go there?
A. Yes.
Q. What was the reason?
A. She said Mr. Hydar had come there looking for me, and left word that I should get to the shop as soon as I could, there was a meeting to be held at 12:30.
Q. Is that all the information you had about the meeting?
A. Yes, sir.
Q. When you got to the shop and to this meeting, did you learn the purpose of the meeting?
A. Very qnickly.
Q. From whom?
Trial Examiner Batten: Mr. Rissman, may I ask a question there?
Mr. Rissman: Surely.
Q. (By Trial Examiner Batten.) You were here yesterday, Mr. Landry, when Mr.—who were the two men who testified about the meetings?
Mr. Rissman: Mr. Neal.
Q. (By Trial Examiner Batten.) You heard Mr. Neal's testimony, did you, about that meeting of April 12th?
1426 A. I did.
Q. And you heard Mr. Wilfer?
Mr. Rissman: No, Mr. Adamski testified about the meeting.
Trial Examiner Batten: Mr. Adamski.
Q. (By Trial Examiner Batten.) You heard their testimony, did you?
A. Yes, sir.
Q. With respect to what happened at the meeting?

A. Yes, sir.

Q. And who was present, and who talked, and what was said?

A. Yes, sir.

Q. Now, was their testimony substantially correct as to what happened there, and what was said?

A. I believe there was silght differences.

Q. I mean, was it substantially the same?

A. Very close.

Q. (By Mr. Lamfrom.) Do you mean that the testimony of Adamski was very close to the other witness, or that the testimony of both witnesses was very close to what actually occurred?

A. You are partly right on both questions. It appeared to me that Mr. Adamski had a sudden loss of memory on vital parts.

Q. (By Trial Examiner Batten.) Was the testimony
1427 of Mr. Neal, as he related it yesterday, substantially as it happened?

A. Very close.

Q. (By Mr. Rissman.) Is that your recollection of what occurred at the meeting of April 12th, the testimony of Mr. Neal?

A. Well, now, I can't go over word for word his testimony. I heard it, and I agree with most of it, but I couldn't go over it word for word.

Mr. Engelhard: I submit the proper way, your Honor, is to ask this man what he knows happened.

Trial Examiner Batten: You may proceed and ask him, have him relate the whole story.

Mr. Rissman: All right, sir.

Q. (By Mr. Rissman.) Tell us how you learned the purpose of the meeting, and from whom, when you got there?

A. There were about somewhere between 20 and 23 members and former members of the Works Council there, they were all there when I got there, and Mr. John Brever, I believe, was chairman, and they were discussing, and they kept on discussing for quite a while, how to start an independent union. There was considerable discussion on that point.

Q. Was this the first time that you heard the purpose of the meeting was to create an independent union?

A. I had heard some talk in the shop amongst the men, after the last meeting of the Works Council.

1428 Q. Do you recall that at this meeting of April 12, 1937, Mr. Harold Falk appeared?

A. I do.

Q. Do you recall any statement made by Mr. Harold Falk?

A. In answer to a question, I do.

Q. What was the statement he made?

Mr. Lamfrom: What was the question?

Q. (By Mr. Rissman.) Tell us what the question was, and his answer.

A. The question, I clearly remember, was made by Mr. John Wilfer, and he said, "If you push the raise up a month from June 1st until May 1st, wouldn't that keep a lot of men from joining the C. I. O.?"

Q. Do you remember that very distinctly?

A. I do.

Q. And you are sure that John Wilfer used the words "C. I. O." or the name "C. I. O."?

A. Yes.

Q. Did he refer to the C. I. O. union, the Amalgamated Association of Iron, Steel and Tin Workers?

A. I think so.

Q. There wasn't any other C. I. O. union in the plant?

A. No.

Q. What was Mr. Falk's answer to that question, or that statement?

1429 A. As close as I recall the words, I believe he started out by saying, "We are not stiff that we can't bend a little. If that is the way the boys feel about it, I believe we can make it May 1st."

Q. And the raise was actually granted on May 1st?

A. It was.

Q. Can you tell us, Mr. Landry, as president of your union, if the granting of that raise had any effect upon membership of that union?

Mr. Lamfrom: I object.

Q. (By Mr. Rissman.) (Continuing) Or the obtaining of members for your union?

Mr. Lamfrom: That is objected to, as calling for a conclusion.

Trial Examiner Batten: I think, in the case of this witness being president of the union, he may testify as to what occurred, what happened to the membership of the union subsequent to this time, if that is your question.

Mr. Rissman: Yes, sir, the effect.

Trial Examiner Batten: I do not understand your ques-

ition to be to this witness "What effect did this statement have on it."

Q. (By Mr. Rissman.) Do you know, Mr. Landry, whether or not this action of the company's in moving the raise up from June 1st to May 1st had any influence upon the
1430 number of men who later came into the union?

A. Are you asking my personal knowledge?

Q. I am asking you if you know what the result was.

A. Only from what the men told me.

Q. From what the men told you, what was the result?

A. Some of them said, "There you are. The Independent Union is getting us a raise," and others said, "Falks are sticking their nose in here. I am going to join the C. I. O."

Q. Do you recall any other statement by Mr. Falk at that meeting?

A. I believe that he was asked some question there, to which he answered that he was not allowed to give any advice.

Q. Do you recall what the question was?

A. I do not.

Q. Was there any discussion there or any statement by Mr. Falk, relating to an independent union?

A. I couldn't say, I don't remember that.

Q. After that meeting, did you attend any other meetings of this group that was organizing the Independent Union?

A. Yes.

Q. When was that?

A. The next day.

Q. Did you hear the testimony of Mr. Neal?

A. Yes.

Q. With reference to that meeting?

1431 A. Yes.

Q. And you were present at that meeting?

A. I was.

Q. And is your recollection of what occurred and what was said at that meeting substantially the same as the testimony given by Mr. Neal?

Mr. Engelhard: That is objected to.

Trial Examiner Batten: He may answer the question—oh, you are objecting to the question?

Mr. Engelhard: I objected to that question because it asks one man to affirm another man's testimony given under oath. So far, he has shown quite a divergence, his testimony, as to what happened at the meeting of the 12th.

Trial Examiner Batten: Is that an indication that he might do so with respect to this one? Does it follow that he would with respect to this one?

Mr. Engelhard: Well, I think it is improper to ask a question, whether or not his testimony would be the same as another man's.

Trial Examiner Batten: That is quite a different objection.

I believe, Mr. Rissman, you had better inquire of this witness, and have him relate all the details.

Mr. Rissman: Yes, if we want to take the long way.

Trial Examiner Batten: You may proceed.

1432 Mr. Rissman: Then that last question will remain unanswered.

Trial Examiner Batten: Yes; there was an objection to it.

Mr. Rissman: I will withdraw it.

Trial Examiner Batten: No, it doesn't need to be withdrawn. It was objected to.

Mr. Rissman: All right.

Q. (By Mr. Rissman.) Tell us what happened at the meeting of the 13th and where it was held.

A. It was held in the meeting room underneath the hospital, in the afternoon and there was much more discussion about how to form this independent union.

Q. Mr. Landry, were you at that time employed on the night crew?

A. I believe I was.

Q. And when you attended these meetings, the one on April 12th and the one on April 13th, what if anything did you do to record the time you spent there?

A. I didn't record it.

Q. Were you paid for the time you spent at these meetings?

A. Yes.

Q. Do you know if any reports were made by you or by anybody for you as to how much time you spent at these meetings?

A. I couldn't say.

1433 Q. Was the sum of money paid to you for attendance at these meetings later deducted from your wages?

A. Yes.

Q. Do you recall what amount was deducted, or for what number of hours?

A. I believe there was either 16 or 17 hours that was deducted.

Q. That was deducted from the pay check subsequent to the one where you received it?

A. That's right.

Q. Now, tell us, at this meeting of April 13th, were any of the Falks present or anybody representing the management present?

A. I wouldn't swear which day, but I believe that is the day that Richard Falk appeared.

Q. There was a meeting on the following day, too, was there not?

A. Yes.

Q. And was there more than one meeting on any one day?

A. Yes. On one of those days there was two meetings.

Q. And at one of those meetings Richard Falk was present?

A. Yes.

Q. Did you hear Richard Falk make any statement?

A. Yes, sir. He told them what it would cost to incorporate and the fact that three men had to sign the incorporation papers.

1434 Q. Was Harold Falk present at any of these meetings on the 13th or 14th?

A. Not that I remember.

Q. Were any of the other men, employees of the company, present?

A. I don't think so.

Q. If you recall?

A. I don't think so.

Q. Do you recall any statement at any of these meetings on the 12th or 13th with reference to the engaging of an attorney?

A. Yes.

Q. What do you recall with reference to that?

A. Through our discussion we finally decided that we would have to get an attorney to steer us along a little bit, and the names everybody started mentioning, somebody said "Who shall we retain," and I know I replied there was plenty of good labor lawyers, like Mr. Padway and Mr. Quick, and other names were mentioned, I couldn't honestly say what they were, and as I recall it, I believe Mr. Greget said "Let's go and ask Mr. Harold Falk if he can recommend somebody that is familiar with this type of work."

Q. Did anybody at that meeting, as you recall, mention Mr. Burke's name as an attorney?

A. No.

1435 Did Mr. Clark, who now represents the Independent Union?

A. No.

Q. The two names you do remember were Mr. Padway's and Mr. Quick's?

A. That's all, because I mentioned them.

Q. Tell us what happened after Mr. Greget made this statement?

A. The temporary chairman, Mr. Wolf, appointed a committee of three to go and ask Mr. Harold Falk if he could suggest a lawyer.

Q. Did they report back? You were not on that committee, were you?

A. No.

Q. Did the committee report back to the group of men what conversation they had with Mr. Falk?

A. They did.

Q. And what did they report?

A. That they had called up and made an appointment with Mr. Burke for the following morning at 10 o'clock.

Q. Was there any comment by any of the members as to that?

A. I objected very much.

Q. What was your objection?

A. The fact that Mr. Falk was suggesting a lawyer.

Q. Did you make known that objection?

A. I did.

1436 Q. To the men?

A. I did.

Q. What was said, if anything in response to your objection?

A. They immediately started trying to piece together some story they would all tell in case anybody asked who had suggested the lawyer.

Q. (By Mr. Lamfrom.) Who are "they"?

A. The members present.

Q. (By Mr. Rissman.) Do you recall the specific statement of any particular individual as to what kind of a story they would piece together?

A. I just remember my own.

Q. What did you state?

A. I said, "Boys, there are too many men here. It is going to get out. You can tell what you want to. If anybody asks me, it was Mr. Harold Falk."

Q. (By Mr. Lamfrom.) Was there any mention made that Mr. Falk—

Mr. Rissman: I object to this interruption, if the Examiner please.

Mr. Lamfrom: Oh, well, all right.

Mr. Rissman: Well, I do.

Trial Examiner Batten: You may proceed, Mr. Rissman.

Mr. Lamfrom: Go ahead.

1437 Q. (By Mr. Rissman.) After this meeting of April 13th, or the meetings on that day, did you attend any other meetings with this same group?

A. Part of them the next day.

Q. Where were they held?

A. At ten o'clock in the morning, down at Mr. Burke's office.

Q. Were you paid for the time you attended the conference at Mr. Burke's office?

A. I was.

Q. Tell us what occurred, as you remember it, in Mr. Burke's office?

A. We finally conveyed to him—everybody, it seems, took a turn talking, and he finally got the drift, that they wanted to find out how to go about creating an independent union, and as I remember it, he replied, "What you boys want is a nice little organization of your own, within your plant. I think that is a fine idea," and he proceeded to bring out—I believe they were provisional by-laws, I think it was provisional by-laws, which they read to us.

Q. (By Mr. Lamfrom.) Who are "they"?

Q. (By Mr. Rissman.) Who read these provisions to you, or whatever it was?

A. It was either Mr. Burke or Mr. Clark, I wouldn't say which.

1438 Q. One of the attorneys?

A. Yes.

Q. What was said there with reference to paying Mr. Burke or Mr. Clark, paying the fees and the expenses?

A. They asked—

Q. Who asked?

A. I couldn't say.

Q. Some one of the men?

A. Some one of our group said "Now, before we go any further, Mr. Burke, how much are you going to charge us for this?" And he replied that it was nothing to argue about, that

if the Independent Union retained him as their counsel, that that would be all taken care of, and if they didn't it wouldn't cost us anything.

Q. After that meeting in Mr. Burke's office, did you ever attend any other meetings or conferences with this group?

A. I believe they went right back to the shop, to the meeting.

Q. What occurred at the shop?

A. The rest of the members holding conferences were waiting there for us and we discussed the matter of running along as an association, or incorporating, there was very much discussion on that point.

Q. Did you take any part in the discussion?

A. Yes, I chipped in, too.

1439 Q. After that meeting, did you ever attend any other meetings with this group who were organizing the Independent Union?

A. I believe the next day.

Q. In the plant?

A. Sir?

Q. In the plant?

A. Yes.

Q. At the same place as the other meetings?

A. Yes, sir.

Q. During working hours?

A. Yes.

Trial Examiner Batten: Have you any objection if we recess for just a few minutes?

Mr. Rissman: To take up that matter?

Trial Examiner Batten: Yes. I wanted to talk with Mr. Goldberg, Mr. Adelman and the attorneys, please. If you want Mr. Landry, you can bring him too, or any of the officers.

(Whereupon the Trial Examiner, counsel and parties retired to chambers.)

(Discussion outside the record.)

Mr. Goldberg: I will put it as I think we mean it. If I am wrong, you simply stop me.

Mr. Adelman: O. K.

1440 Trial Examiner Batten: Do you want me to go ahead, and I will dictate it?

Mr. Goldberg: All right, go ahead.

Trial Examiner Batten: It is stipulated by and between the Amalgamated Association of Iron, Steel and Tin Work-

ers of North America, and the International Union of Operating Engineers, Local 311—I forget your local number?

Mr. Louis Meindel: Ours is 1528.

Trial Examiner Batten: 1528, of the Amalgamated Association of Iron, Steel and Tin Workers of North America; that as between these two organizations, they agree to the following:

That if, in the determination of the issues in this case, the National Labor Relations Board decides to hold an election in the plant of the Falk Corporation, that if and in that event the 15 employees in the power house and the 2 operating engineers operating the dummies or mobile cranes shall vote separately to determine whether it is their desire to have the Amalgamated Association or the International Operating Engineers represent them for the purpose of collective bargaining.

And it is further stipulated and agreed that this is only effective if, in such an election, only the names of the two organizations above referred to appear on the ballot.

Does that cover it?

1441 Mr. Adelman: That is acceptable to us.

Mr. Goldberg: It is acceptable to us.

Trial Examiner Batten: It was suggested by the Trial Examiner to Mr. Clark, the attorney for the Independent Union of Falk Employees, that this organization also enter into this agreement; that it was Mr. Clark's position that if the Board determine that the plant, including the power house, was the unit, and even if the power house employees voted separately and selected the International Operating Engineers as their bargaining agent, that in that event The Falk Corporation would still have to bargain with the organization which secured the majority of the votes in the entire plant, and for that reason the above stipulation was made effective only as between the Amalgamated Association and the International Operating Engineers.

Mr. Rissman: I think the records should state, also, that this stipulation was dictated in chambers, and where all parties were present, and if not participating in it at least heard it dictated, so it will not look like a deal between the two unions.

Mr. Lamfrom: Let the record show that The Falk Corporation did not participate in anything connected with the stipulation.

Trial Examiner Batten: We will recess a few minutes more, gentlemen, and then we will resume.

1442 (A short recess followed.)

(Whereupon, the Trial Examiner, counsel and the parties returned to the hearing room, where the following further proceedings were had:)

Trial Examiner Batten: I believe we are ready to proceed, gentlemen. I presume that the newspaper men may be interested in what occurred at this conference.

Mr. Rissman: They might have a slight interest.

Trial Examiner Batten: There is nothing secret about it, except that there was a stipulation entered into between the Amalgamated Association of the C. I. O. and the International Operating Engineers, the A. F. of L. organization, that if the Board determines that it is necessary to hold an election in the Falk plant, that, as between these two organizations, they agree that the engineers and the two men employed on the dummies or mobile cranes shall vote separately as between these two organizations.

Now, the Independent Employees Association—

Mr. Rissman: Independent Union of Falk Employees.

Trial Examiner Batten: (Continuing.) —did not enter into this arrangement, and the arrangement in no way affects any of their rights or interest.

Mr. Lamfrom: They need not take this down. That is the Independent Union of Falk Employees.

Trial Examiner Batten: Yes, Independent Union of

1443 Falk Employees.

Mr. Rissman: Independent Union of Falk Employees.

Mr. Lamfrom: Not the Association.

Trial Examiner Batten: In other words, the stipulation is effective as to the C. I. O. and the A. F. of L. organizations.

I think we are ready to proceed.

Mr. Rissman: Will you read the last question, please?

(The record was read by the reporter.)

Q. (By Mr. Rissman.) What was this meeting about?

A. I believe it was decided to proceed without incorporating as an Association, and to have applications printed for this association.

Q. Was there anything else discussed at that meeting, that you recall?

A. I don't remember any more.

Q. After that meeting, did you ever participate in any

affairs, or in any meetings, or conferences, with this same group?

A. The first meeting of this independent organization to gain members for the organization.

Q. You refer now to the meeting testified to that was held at the North Avenue Auditorium?

A. I do.

Q. Do you recall any of the statements there by 1444 members of that organization with reference to the attorney?

A. Yes.

Q. Whose statement, and tell us what it was.

A. Someone asked who had recommended or suggested the attorney they had decided upon, and it was answered by Mr. Les Greget. I believe that when the party asked the question they said "We hear that Mr. Harold Falk had suggested this attorney. Is that so?"

Q. What did Mr. Greget say?

A. He said "That is not so. I personally recommended Mr. Burke, because I had had dealings with him myself."

Q. Are you quite sure, Mr. Landry, that Mr. Greget said "That is not so. I personally had dealings with Mr. Burke myself"?

A. I am. It impressed me very much.

Q. Why did it impress you very much?

A. Because it was very false, misleading.

Q. After that meeting at the Auditorium, that first meeting you just testified about, did you ever attend any other meetings or conference of this group of the Independent Union?

A. No.

Q. When was the last time you participated in any of their affairs as one of their members, or as one of their fellows?

A. I believe that meeting terminated my connection.

Q. What were the reasons for the termination of 1445 your connection with them?

A. I was convinced that the company had a finger in the pie, and wanted nothing to do with it.

Q. You mean you wanted nothing to do with it?

A. Yes.

Q. Can you sum up for us the reasons that convinced you the company had its finger in the pie?

A. The statement that I just related with regards to Mr. Greget, the fact that all the men—the majority of the men, in these Works Council meetings were men that in my opinion had always tried to go out of their way to gain favor in the company's eyes, and I believe it showed it through the various acts that they tried to concoct the story as to who suggested the lawyer, and the reputation those men had in the shop.

Q. Has anything occurred from that time until now to cause you to change your opinion?

A. No.

Q. Has anything occurred from that time until now to cause your opinion to be confirmed?

A. I would say yes.

Q. Can you relate to us the things that have occurred that stand out in your mind at the present time, that confirm your opinion that the company had its finger in the pie?

A. I was told that I could get application blanks 1446 from Mr. Greget, and when I came to work I proceeded down to where he works to get these application blanks. He handed me a handful, and I sat on his bench and talked about the methods of distributing them, and he said "You can't do this openly, but you can do it underhand, like the C. I. O. did."

While he was talking, Mr. Harry Green walked up, I imagine to see him, I don't know, but he came right up and looked through the machines, it is a big bar, and he talked through the bar, and he seen me sitting there with my lap full of application blanks, and he turned around and walked away.

Q. Can you tell us whether that was before or after this meeting at the North Avenue Auditorium?

A. I believe it was before.

Q. All right, give us some other instances, or reasons why you feel that your opinion that the Independent Union of Falk Employees has relationship with the company was confirmed?

A. When I got back to my machine, I was asked by an apprentice, whether he could sign up. I said "I don't know, I will find out right away."

And I went right back down to Mr. Green, and asked him if we would sign up apprentices in the Independent Union. He said "Sure, sure, go ahead."

I turned around and walked away.

1447 Q. Why did you ask Mr. Green, the superintendent, if apprentices would be eligible to vote in this Independent Union?

A. I was under the conclusion that it was cooked and dried. I went to him, and he answered it.

Q. Have you ever asked Mr. Green who you could sign up for C. I. O. membership?

A. I have not.

Q. Can you relate to us any other instances that confirm your opinion that the Independent Union of Falk Employees is associated or connected with the company?

A. Yes.

Q. Tell us.

A. One of the men was distributing C. I. O. cards, application blanks, and in some manner it came to the attention of Mr. Green, and he took this man off the machine he was operating on the night shift, and put him on a job days as a helper. I don't believe he changed his wages any, but it was a demotion, in my estimation, it was just helping, a poorer job.

Q. Was it less desirable work than he had been doing before?

A. In my estimation it was; also, the man, the way he told me.

Q. Who was that man?

1448 Mr. Engelhard: Just a minute. Were you present when this occurred?

Mr. Rissman: I object to the interruption. If you have an objection, you can make it. If your want to cross examine, wait your turn.

Mr. Engelhard: I will merely ask this question so I can make a motion.

Trial Examiner Batten: Just a minute. It is purely a question laying a foundation for an objection?

Mr. Engelhard: Yes. That is its purpose.

Mr. Rissman: This witness is not required to answer this question at this time.

Trial Examiner Batten: He is simply asking the question for the purpose of making an objection, I presume.

The Witness: What was the question?

Q. (By Mr. Engelhard,) Mr. Landry, were you present when Mr. Green demoted this man?

A. I was not.

Mr. Engelhard: Then I move that the testimony of the witness be stricken, because it did not occur in his presence.

Q. (By Trial Examiner Batten.) You are relating the incident as this man told it to you?

A. And as Mr. Harry Green told it to me.

Trial Examiner Batten: I will overrule the objection. He may testify as to what this man told him, and also what
1449 Mr. Green told him.

Q. (By Mr. Rissman.) Who is this man, do you recall?

A. Lee Rasey.

Q. Tell us what Lee Rasey told you in this connection. Did he speak to you first? Who spoke to you first, Mr. Rasey or Mr. Green?

A. I believe Mr. Rasey.

Q. Tell us what he told you.

A. He said that somebody squealed on him and Green came over and gave him hell, and put him on the day shift, helping, I believe, with Joe Trest. I am not certain of that name.

Q. What did Mr. Green tell you about this incident?

A. I asked him if that was so. He said "Certainly it was so. He has no right to go around the shop, bothering the men, and leaving his own machine. I put him where I can watch him."

Q. You say Lee Rasey is now a helper to Joe Trost?

A. He was then. I don't believe he is employed there any more.

Q. But the position to which he was transferred was in connection with Joe Trost?

A. Yes.

Q. Who is Joe Trost?

A. Why, he has been recorder.

Q. No, tell us who he is.

1450 A. He is a machinist.

Q. (By Mr. Lamfrom.) Don't be so fast. Take it easy.

A. He is a machinist.

Q. (By Mr. Rissman.) What were his labor affiliations?

A. I believe he is a member of the Independent Union.

Q. Was he ever a member of the Works Council?

A. Yes.

Q. Has Joe Trost ever expressed any opinion to you?

A. Oh, yes.

Q. Regarding the C. I. O.?
A. Very freely.
Q. Can you tell us what Joe Trost told you he thinks of the C. I. O.?

Mr. Lamfrom: Now, if the Examiner please, just see how far we are straying here from any legitimate American jurisprudence in the practice of the law, despite the fact that this Act says that the rules of evidence in courts of law and equity shall not govern.

Here is a man that is going to testify to something that a fellow Joe Schultz told him—

Mr. Rissman: Joe Trost.

Mr. Lamfrom: Whatever it is; his views of the C. I. O., and the only thing that connects Joe Schultz—

Mr. Rissman: Joe Trost, T-r-o-s-t.

Mr. Lamfrom: Whatever his name is, I don't know
1451 whether he has anything to do with this case, and is a member of the Works Council.

The water boy up there may have expressed some opinion to this estimable witness. What bearing would that have on it.

If the Examiner please, you can go on interminably.

Trial Examiner Batten: I don't think that any statement which this man may have made to Mr. Landrygare at all binding upon the respondent. However I will permit him to state in general what those statements were. That is in no way binding upon the respondent.

I assume Mr. Rissman is asking these questions for the purpose of showing the type of individual that this man was transferred under.

Mr. Rissman: That is quite obvious, your Honor; that is the reason.

Trial Examiner Batten: I can assume that is what he is asking the question for.

The Witness: Mr. Examiner, may I ask a question?

Q. (By Mr. Rissman.) Who are you going to ask?

The Witness: An objection was made to—

Trial Examiner Batten: Now, just a minute.

Mr. Lamfrom: Don't get too enthusiastic.

The Witness: I hadn't finished my statement.

Trial Examiner Batten: What was the last question, please? I think your rights will be amply protected,
1452 Mr. Lamfrom.

Mr. Lamfrom: Who is this fellow Schultz—I don't get his name.

Trial Examiner Batten: What was that last question?

(The question was read.)

Trial Examiner Batten: You may answer that question, for the purpose that the Examiner indicated.

Mr. Lamfrom: May I get his name, please? I thought it was Schultz.

Mr. Rissman: Trost, T-r-o-s-t.

Mr. Lamfrom: T-r-o-s-t?

Mr. Rissman: Yes.

Mr. Lamfrom: You don't mind if I write that down here?

Mr. Rissman: I will even write it for you.

Q. (By Trial Examiner Batten.) You may tell us, in a few words, what his attitude, as expressed to you, was.

A. In very few words, he said the C. I. O. was the bunk, no good.

Q. Can you relate for us any other instances that confirmed your opinion?

A. As I say, something was objected to before I finished. While he was transferred, after he was transferred to helping this Joe Trost, we had all received pretty strict orders that there should be absolutely no convassing in the shop for members. I personally received mine from Mr. Harry
1453 Green. A day or two following, while he was helping Joe Trost, who walks by him but Mr. Joe Trost, handing out application blanks for the Independent Union, right in broad daylight.

Q. (By Mr. Engelhard.) Were you there when that happened?

A. I was not.

Mr. Engelhard: Then I move to strike the testimony.

Q. (By Mr. Rissman.) Did Mr. Rasey tell you about this?

A. Yes, more than one time.

Q. Tell us what Mr. Rasey told you?

Mr. Lamfrom: Just a minute. See where it gets us: An interminable web of hearsay.

Trial Examiner Batten: Just a minute. The statement of the witnesses may be stricken. I want to caution you, Mr. Landry, that you may state what Mr. Rasey told you, you may repeat conversations, but do not give them as a narrative of something.

Q. (By Mr. Rissman.) What did Mr. Rasey tell you about this passing of applications?

A. That was substantially his statement, while he was working.

Q. Yes.

A. He says "Here is Joe going along, handing out application blanks."

Q. Joe Trost?'

A. Joe Trost.

1454 Q. What kind of application blanks was Joe Trost handing out?

A. For the Independent Union.

Q. (By Mr. Lamfrom.) Did you see them?

A. What?

Mr. Rissman: I object to this intrusion. He was relating a conversation.

Mr. Lamfrom: No, he wasn't—

The Witness: Yes, sir, I was.

Mr. Lamfrom (Continuing): —relating a conversation at all. You asked him what kind of blanks he was distributing, which called for the witness' answer to that question, not Rasey's.

A. I said Rasey talked to me.

Mr. Lamfrom: I will talk to you later.

Q. (By Mr. Rissman.) What else did Mr. Rasey tell you?

A. I asked him, "What did you do?" He said, "I went right over to Carl Senn. He was over by the 13-foot mill", and he said "I told him if we can't distribute our applications, they can't either."

Q. Prior to this change of work by the foreman; the work of Mr. Rasey, had you ever received any instructions from your foreman or superintendent, or anybody else, telling you that you were not permitted to solicit union membership during working hours, or in the plant?

1455 A. I don't know if it was after or before then.

Q. This conversation you relate, where Mr. Rasey told you he saw Joe Trost doing that, was after the instructions were issued, after the instructions prohibiting such activity?

A. Yes.

Q. Do you know if the incident Mr. Rasey told you about, Joe Trost going around with the application cards, occurred after the instructions were issued?

A. I am quite certain.

Q. Can you relate to us any other incidents that confirm your opinion that the company had its finger in the pie?

Trial Examiner Batten: Mr. Rissman, I don't want to

shut you off, but I think he has related quite a few. Let's get along here with the history of this thing.

Mr. Rissman: Very well, Mr. Examiner. He could probably go on for a month.

Mr. Lamfrom: I think he probably could. Under your able prompting, it might work for two months.

Q. (By Mr. Rissman.) Mr. Landry, you started to relate to us before the reason you submitted your resignation to the Works Council.

A. Yes.

Q. Will you tell us what that reason was?

A. I believe I said—

Trial Examiner Batten: Mr. Rissman, didn't he re-
1456 late why he had resigned?

Mr. Lamfrom: Yes.

Q. (By Trial Examiner Batten.) As I recall it, you stated it, didn't you, Mr. Landry?

A. Some of the reasons. I didn't give them all.

Q. (By Mr. Lamfrom.) Have you got some more, now?

A. One more, one more good one.

Mr. Lamfrom: Go ahead.

Trial Examiner Batten: Go ahead.

Q. (By Mr. Rissman.) Go ahead, Mr. Landry.

A. While Mr. Richard Falk was at that one meeting—

Q. Meeting of the Works Council?

A. Yes.

Q. Yes.

A. I asked him if it were possible for to have an independent union, and have officers and directors who were not employed by the company.

Q. Did he reply to that inquiry?

A. He did. He thought it was possible. And I tried to convince the men that, in view of the way the Works Council had been run, and the dissatisfaction that that would be the proper thing, and that we might be able to build up a nice independent union out of it.

Q. What action, if any, was taken by Works Council on that suggestion, or proposal?

1457 A. They couldn't see it at all.

Q. You say that at that time the Works Council was being run unsatisfactorily?

A. Yes.

Q. Can you tell us how that unsatisfaction presented itself to you?

Mr. Lamfrom: Dissatisfaction.
Mr. Rissman: Dissatisfaction.
Mr. Lamson: "Unsatisfaction" is ungrammatical.
Mr. Rissman: Very well.
Q. (By Mr. Rissman.) What were the unsatisfactory methods?
A. The methods of settling dispute, settling requests for wages, wage increases.
Q. What was unsatisfactory about the method of settling disputes?
A. In the manner in which— I could relate an instance of my own. Would that do?
Q. Do you want to give us an example?
A. Yes.
Q. Give us the example.
A. A man on my shift came to me and asked me if I would ask Mr. Harold Falk the next day if it wasn't worth more money to run a machine than just to be a helper, that he was running a machine, and getting less money than the helper.

I said "I will ask him anything", and I did ask him
1458 the next day.

The day following, Mr. Harry Green came up to my machine, in very precise terms,—which I couldn't misunderstand,—

Mr. Lamfrom: Just a minute.
Mr. Rissman: Do you want to stop him?
Mr. Lamfrom: I think the witness should be instructed to say what Mr. Harry Green said.
Mr. Rissman: Let the Examiner decide.
Mr. Lamfrom: You see, now, he is getting in his own view so nicely it may slip by us.
Trial Examiner Batten: I don't think it will influence the Examiner. Again I want to caution you that you must limit your statement to the conversation.
The Witness: I can't use all of his conversation.
Q. (By Mr. Rissman.) Why not?
A. Because it was profane language.
Q. All right, tell us the other part.
Mr. Lamfrom: We don't care about a little profanity here.
Q. (By Trial Examiner Batten.) You remember the words, don't you?
A. Yes, but I can't use them all, because he interjected.
Q. Repeat the substance of the conversation.
A. He wanted to know what the hell Louis Selashak, or

somebody—where he had a raise coming, and he can get
1459 the hell out of here whenever he wants to, he is no good,
he is just lucky he is here, and he walked up and down by my machine there. My gosh, they could hear him half way across the shop, shouting and hollering, and I suddenly stopped him and I turned around and I said, "Mr. Green, is that what you call bargaining?" And he said "I don't give a damn what you call it", and he walked away.

Q. (By Mr. Rissman.) During the time when you were a member of the Works Council, whenever there was a request made to management on matters of interest to the workers, wages, hours, or in working conditions, was there any time to your recollection, when some management representative of the company, Mr. Falk or any of the others, came in and discussed those matters with the employees?

A. In the shop, you mean?

Q. No, at meetings.

A. Yes.

Q. Did they ever come in and do anything more than merely state the position of the company?

A. Very seldom.

Q. Can you give us an example of the method in which a matter was presented to the company, and the method in which the company acted upon it, or made its reply?

Trial Examiner Batten: Mr. Rissman, I don't want it to
appear that I want to keep any evidence out of this rec-
1460 ord, but it does appear to me that the only issue about
the Works Council was to show the history of the respondent's labor relations.

It seems to me there is plenty of evidence thus far in the record to show what the Works Council is, how it operated and so forth. So it seems to me if you would confine your examination now of this witness to the issue involved in this case, that we will get along.

Mr. Rissman: I will accept that suggestion, Mr. Examiner.

Mr. Lamfrom: It is hard to, but it is probably better.

Q. (By Mr. Rissman.) Mr. Landry, were you present on May 5, 1937, at the Eagle Club Room?

A. Yes, sir.

Q. You were there as a representative of your union?

A. Yes, sir.

Q. You have heard the testimony of the other witnesses as to who was present?

A. I have.

Mr. Rissman: If there is no objection to that form of question.

Mr. Engelhard: It seems to me, Mr. Rissman—

Mr. Lamfrom: You have stipulated.

Mr. Engelhard (Continuing) —that there is no dispute as to who was there. The records you have introduced in evidence show who was there.

1461 Mr. Rissman: No, it doesn't.

Mr. Engelhard: Landry's name appear in the record, and Adelman's name, and everybody's.

Mr. Rissman: Not to my recollection. The record indicates that Adelman and the committee were there, and Mr. Harold Falk, and Mr. Leo Mann were there representing the company, and other company representatives.

Trial Examiner Batten: I think yesterday a witness testified to all he could remember who were there.

Mr. Lamfrom: Perhaps we could cover everybody who was there, by stipulating that Mr. Rissman was not there.

Trial Examiner Batten: Of course, I assume if you two gentlemen had been there, it would probably have been a much more successful conference.

Mr. Lamfrom: Do you judge that from what has happened here?

Trial Examiner Batten: We seem to be accomplishing things rather quickly here.

Mr. Lamfrom: That is no sarcasm, I hope.

Trial Examiner Batten: Will you proceed, Mr. Rissman?

Q. (By Mr. Rissman.) Aside from that meeting, and what occurred at that time, have there been any requests by your union that the company have conferences for collective bargaining?

A. No.

1462 Mr. Lamfrom: May we have that question? I was conferring with Mr. Engelhard.

(The question was read.)

Mr. Engelhard: Will you stipulate for the purpose of the record that there has been no effort made by the C. I. O. to contact the company since May 5th?

Mr. Rissman: I cannot stipulate, because I do not see that that is so.

Mr. Engelhard: Well, that is the testimony.

Mr. Rissman: I cannot stipulate to anything of which I have no knowledge.

Mr. Lamfrom: Why not ask the witness as to whether or not he knows whether there were any more requests?

Q. (By Mr. Rissman.) Do you know, Mr. Landry, whether there were any other requests for collective bargaining with the company?

A. Not that I know.

Q. By your union?

A. Not that I know.

Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Lamfrom.) I suppose, Mr. Landry, before you came up here, you discussed pretty carefully with Mr. Rissman the testimony that you were going to give here, did you not?

1463 A. Several times.

Q. What?

A. Several times.

Q. A little louder, please, I can't hear you.

A. We talked it over.

Q. You talked it over several times, didn't you?

A. I believe so.

Q. About how many times?

A. I couldn't say.

Q. Well, give us your best judgment?

A. Twice.

Q. At the office of the National Labor Relations Board?

A. Once. It might have been twice there, I couldn't say.

Q. Twice?

A. I believe I was there twice.

Q. When was the most recent meeting with Mr. Rissman?

A. I think it was last Sunday, at our regular union meeting.

Q. Oh, Mr. Rissman attended your regular meeting?

A. He did not.

Q. Well, where was this meeting with Mr. Rissman?

A. At the Colonial Hall.

Q. Where?

A. At the Colonial Hall.

Q. How long did you confer with him?

1464 A. About an hour, I believe.

Q. And when was the other meeting you had with him, to go over your testimony?

A. A week or so ago.
Q. At the office of the Board?
A. Yes.
Q. How long did that take?
A. From 7:30 until around 10 o'clock, something like that.
Q. Seven thirty until nine o'clock?
A. Ten.
Q. Ten o'clock?
A. I believe it was a quarter to ten.
Q. At night?
A. Correct.
Q. And did, in the course of the conversation that you had with Mr. Rissman, you volunteer statements that you were going to make if you were called as a witness?
A. I did.
Q. I suppose you told him about all of the things that you have testified here to, today, substantially?
A. Correct.
Q. Did you say to Mr. Rissman, during your conversations with him, that there were certain things in the attitude and activities of The Falk Corporation that convinced you that they were tied up with the Independent Union?
1465 A. I may have.
Q. Well, didn't you?
A. I don't recall that.
Q. How did that subject come up for discussion?
A. Through my testimony.
Q. To your testimony. You, in talking over this matter with Mr. Rissman, suggested to him that you could give testimony indicating that The Falk Corporation was tied up with the company Independent Union?
A. In my opinion, yes.
Q. Then you proceeded to detail those incidents that you have detailed today?
A. That's right.
Q. Did you go over with him the incidents of these meetings that you attended, of the Independent Union?
A. As well as I could remember them.
Q. How old a man are you, Mr. Landry?
A. 32.
Q. Married?
A. Yes.
Q. How long have you lived here?
A. In Milwaukee?

Q. Yes.

A. Practically all my life.

Q. I didn't get your testimony as to how long you
1466 were connected with The Falk Corporation.

A. 12 years.

Trial Examiner Batten: 12 years.

Mr. Rissman: 12 years.

Q. (By Mr. Lamfrom.) Your feeling towards the Falk Corporation is one of friendliness, isn't it?

A. Surely.

Q. There is nothing in your connection with The Falk Corporation that renders you at all hostile in your attitude toward them, is there?

A. No.

Trial Examiner Batten: You will have to speak up, Mr. Witness.

Q. (By Mr. Lamfrom.) You said "No" quite readily on direct examination. Now, on cross examination, you get a little bit quieter. I will just come up.

Is there any place I could stand here that you would be more convenienced?

A. It will not bother me a bit.

Q. Your interest in this matter is one that is prompted by your interest in free collective bargaining, is that right?

Mr. Rissman: I object to the question. His interest will appear from his testimony. He is here as president of the union.

Trial Examiner Batten: I will sustain the objection.

1467 Q. (By Mr. Lamfrom.) What is your interest in this controversy, that leads you to come up here and give this testimony?

Mr. Rissman: I object to that question. It appears from his testimony what his interest is.

Trial Examiner Batten: I will sustain the objection.

Mr. Lamfrom: I think it is pertinent, if the Examiner pleases, for me to inquire, and get from his own lips what his particular interest is.

I have never known that to be ruled out on a cross examination.

Trial Examiner Batten: Well, I see no objection, Mr. Lamfrom, to your questioning the witness with respect to—

Mr. Rissman: Entirely immaterial.

Mr. Lamfrom: The Examiner is talking.

Trial Examiner Batten (Continuing): —to in what capac-

ity he has been employed there, whether he has ever had any difficulty with them whether he is president of any labor organization; I think it will appear from those facts what interest he may have, if any; any controversies he may have gotten into with foremen or superintendents.

Mr. Lamfrom: It appears here that he was a member of the Independent Union.

Mr. Rissman: No such thing appears, if the Examiner please.

Trial Examiner Batten: I think this, Mr. Lamfrom;
1468 I think it is proper for you to inquire as to whether or not he was. The testimony shows he attended meetings and that he was interested in the C. I. O. at the same time he attended some of these meetings.

All of those facts, I think, are perfectly proper to bring out, to show any interest that the witness has; but I think it should be shown by those facts.

Mr. Lamfrom: Well, maybe so.

Q. (By Mr. Lamfrom.) At the time you were attending these meetings of the Independent Union, were you in touch with any of the C. I. O. officials?

A. Officials?

Q. Officers of the C. I. O. here in Milwaukee.

A. No.

Q. Or any members of the C. I. O. union?

A. Members in our own shop.

Q. And you were informing the members of the C. I. O. union in your own shop as to what was occurring at these meetings of the Independent, were you not?

Mr. Rissman: I object to the question. There is no testimony that he informed anybody about anything.

Trial Examiner Batten: I think the question is, did he?

Mr. Lamfrom: Yes.

Q. (By Mr. Lamfrom.) Didn't you?

A. No, I hadn't joined it yet, while I was going to
1469 those meetings.

Q. I didn't ask you that.

A. I didn't inform them.

Q. You didn't inform any of the members of the C. I. O. in your shop of the occurrences that you participated in when your were attending these meetings of the Independent Union?

A. To be perfectly frank—

Q. That is what we expect you to be, perfectly frank.

Trial Examiner Batten: Just a minute, Mr. Lamfrom. Let the witness get the words out of his mouth.

Mr. Lamfrom: I know; but the idea of a witness saying "to be perfectly frank:" That is presumed.

Trial Examiner Batten: I know; but irrespective, when he is right in the middle of a word, let him finish.

A. They may have been members that I talked to, and I didn't know they were, because that was the week in which the signing up was going on. I talked to my personal friends, naturally.

Q. (By Mr. Lamfrom.) When did you first make up your mind to become a member of the C. I. O.?

A. At the very last of this week of meetings, because it didn't satisfy me, I couldn't see the proper connection.

Q. If you will just confine yourself to answering the questions, I will be much obligated to you. I am interested in the answers I ask for.

1470 A. I believe I answered, at the end of the week.

Q. You went up to the C. I. O. and just joined them, that was all?

A. No. They had approached me.

Q. They had approached you before, hadn't they?

A. They had not.

Q. You mean to say that all the time that C. I. O. agitation was taking place, in the Falk plant, you hadn't been approached by the C. I. O.?

Mr. Rissman: I object to that, and resent Mr. Lamfrom's attitude. Merely because he doesn't like the answer is no reason why he should heckle the witness.

Trial Examiner Batten: You may answer.

A. I have forgotten it.

Q. (By Trial Examiner Batten.) The question is, do you mean that during all this time the agitation was going on in this plant, that no one had previously approached you to join the C. I. O.?

A. They had not.

Q. (By Mr. Lamfrom.) You are quite sure of that, are you?

A. I am, because our end of the shop was the very last.

Q. You are quite sure of it?

A. I am.

Q. So that the joining of the C. I. O. came from the determination that the Falk Corporation had a hand in the

1471 Independent Union of Falk Employees, is that right?

Mr. Rissman: I object to the form of the question. He hasn't said that. You may ask the reasons he joined the C. I. O., if you care to. Mr. Landry is testifying, and not Mr. Lamfrom, even though there is a similarity in names.

Trial Examiner Batten: I think the witness is perfectly capable of taking care of himself. Will you read the question please?

Mr. Rissman: I do object to the form of the question.

Trial Examiner Batten: Read the question.

(The question was read.)

A. Partly so.

Q. (By Mr. Lamfrom.) What were the other reasons?

A. When they approached me, they said the night gang was about 99 per cent C. I. O. I said "I always went with the boys, what they wanted." I said, "I will stick with them."

Q. And you were somewhat irritated by the fact that Mr. Greget had made a statement, in answer to the question from the floor at that meeting, I think it was at the North Avenue Auditorium, with reference to how this attorney had been engaged?

A. Right.

Q. Were you present at any conversation or meeting had in which there was a conversation between the boys who were getting up this Independent Union, at which time there
1472 was a discussion amongst themselves as to what would be said if the question of who suggested Mr. Burke came up?

A. Yes.

Q. Who was there?

A. Quite a number of the men.

Q. How many?

A. Substantially those that were present all during the week at those meetings.

Q. Did you participate in that discussion?

A. I did. I created it, I believe.

Q. What was your participation in the discussion?

A. That it didn't satisfy me at all.

Q. Well, what did you say?

A. I believe I related, on the direct examination, that I told them that they could say what they wanted to, but if anybody asked me I would tell them the truth, that Mr. Harold Falk suggested the lawyer.

Q. Then came the meeting at the North Avenue Auditorium, and Greget answered the question as he did, as you have testified?

A. That's right, yes.

Q. Then you got up and said that Harold Falk suggested it?

A. I did not.

Mr. Rissman: I object to that. That is not so.

Q. (By Mr. Lamfrom.) But you had said if anything
1473 came up, you would tell them how it happened?

A. They didn't ask me.

Q. But you had said if anything came up, you were going to tell them?

Mr. Rissman: I object to that.

Q. (By Mr. Lamfrom.) Didn't you?

Mr. Rissman: I object to that.

Mr. Lamfrom: Just a minute.

Trial Examiner Batten: Now, Mr. Rissman, please let him proceed.

Mr. Rissman: He is going into motives.

Trial Examiner Batten: Let him proceed with his cross-examination. If you have an objection to the question, if you will just make your objection, I will rule on it.

What was the question please?

(The question was read.)

Trial Examiner Batten: You may answer that.

A. The question wasn't asked by you.

Q. (By Mr. Lamfrom.) I am not asking you that. Now, Mr. Landry, you are a very intelligent, a capable gentleman.

A. Thank you.

Q. And you know just exactly what the meaning of these questions is, I am sure. Let me repeat: You had said, when the discussion came up among the fellows, that if anybody
told a story apparently agreed upon by some of the boys
1474 as to how the attorney, Mr. Burke, came into the picture, that you were going to tell the boys, didn't you?

A. No.

Q. Well, what did you say?

A. I said if anybody asked me, I will tell them that Mr. Harold Falk made the statement.

Q. Knowing what Greget said was not the truth at that meeting, you didn't volunteer to tell your associates and companions in that undertaking, what the facts were, did you?

A. I told many of them, yes.

Q. Did you get up at the meeting and say "Well, what Mr. Greget says is not the truth. Mr. Falk suggested the attorney Mr. Burke."

A. I did not.

Q. Didn't you think that was the thing to do, if you were interested in this thing from a sincere standpoint?

Mr. Rissman: I object to what he thought would have been advisable.

Trial Examiner Batten: The objection will be sustained.

Q. (By Mr. Lamfrom.) Why didn't you at that time tell them? You were all assembled there together.

A. When I got off the stage, I did, those I talked to, I said "Greget is telling a danged lie."

Q. You were on the stage when this happened?

A. Oh, yes.

1475 Q. And how many of the men did you tell that Greget was a liar?

A. I didn't count them.

Q. Well, what did you say?

A. "Greget is lying."

Q. Well, how many did you tell?

A. I just said I didn't count them.

Q. Two or three?

A. At least, if not more.

Q. And from then on, you felt that you did not care to belong to this independent group, because of the fact, among other things, that Greget had made a misstatement, and from that you deduced that the Falk Corporation had a hand in it, is that right?

Mr. Rissman: I object to the question. It is entirely misstating the evidence, if the statement contains evidence, and tends to put words into the witness' mouth as to the reasons why he left this organization.

Trial Examiner Batten: Read the question.

(The question was read.)

Trial Examiner Batten: I think he may answer.

A. I believe I gave several other instances, what helped me to make up my mind.

Q. (By Mr. Lamfrom.) Were you of the opinion at that time that this story that Greget told was concocted by

1476 someone connected with the Falk Corporation?

A. I was of the opinion it was possible.

Q. Were you of that same opinion when you had the talk among yourselves, as to what would be said if the question of an attorney came up?

A. Quite naturally.

Q. What led you to have that opinion?

A. The question should never have come up. They should have told the truth all the way through.

Q. Well, no one of the Falk Corporation officials or executives was present at the time you boys talked about what story would be given concerning the appointment or selection of attorney, was there?

A. Not to my knowledge.

Q. And none of the Falk people were present at the time of this meeting at the North Avenue Auditorium?

A. Falk people, did you say?

Q. I mean the Falk officials or managers.

A. There were foremen there, there was an assistant—I believe there was an assistant superintendent there, or general foreman, whatever his name is, was there.

Q. When this matter of what would be said about the attorney came up, was that the substantial agreement on the part of most of the boys?

A. They didn't agree, to tell the honest truth.

1477 Q. Were there two factions on that point?

A. To be frank, they didn't know what to say to cover it up.

Q. Who didn't know what to say to cover it up?

A. The majority of the members of the Works Council.

Q. What was there to cover up about?

A. There wasn't anything to cover up, but they thought there was.

Q. The majority of them?

A. Yes.

Q. Did Greget say he felt there was something to cover up?

A. If I am not mistaken, he was very much in the discussion as to who they would say suggested it.

Q. What was in the discussion, as to what there was about the suggestion of Mr. Falk of an attorney, that should be covered up?

A. There was such a jumble of arguing that I only remember my own statement clearly, because I differed so much from what the majority thought.

Q. Did you think there was anything to be covered up?

A. That is a hard one to answer.

Q. Sure it is a hard one to answer.

A. I am not in a position to say.

Q. Did you have any thought about it?

A. Yes.

1478 Q. Well, what about that suggestion of Mr. Falk's was there that you thought should or should not be covered up?

A. Because this Mr. Greget was a little too thick with them to suit me.

Q. Thick with whom?

A. With the company officials.

Q. Was he thick with Mr. Harold Falk?

A. I believe he was a good friend.

Q. I know that "thick" is a commonly stated description.

A. When he comes in the shop he talks to him and appears to be a very good friend of Mr. Green.

Q. You mean Harold Falk does?

A. Sure.

Q. And Greget is a good friend of Green?

A. He appears to be.

Q. Did you have any idea, when this question of covering up was discussed, that any member of the Falk Corporation management or official had made any suggestion to that effect?

A. I have no proof.

Q. Did you think that they had said that?

A. I thought it was possible, yes.

Q. And for that reason you took the position that you did?

A. That was part of it, yes.

Q. Because you thought the firm wanted it covered up?

A. I thought it was possible.

1479 Q. Did you take the position you took because the firm wanted it covered up or because some of the boys wanted to cover it up?

A. I knew that the boys wanted to cover it up. It was left open about whether I wanted to think the firm was or not; but the mere fact that Mr. Falk suggested the lawyer put in my mind that there might be some connection there.

Q. A committee went to Mr. Falk?

A. Yes, that's right.

Q. And asked him to suggest a lawyer?

A. Yes.

Q. That was after discussion had at the meeting, wasn't it?

A. Oh, yes.

Q. And a majority of the boys at that meeting were in favor of having a committee go to Mr. Falk and get some

suggestion if he would give it, as to who the lawyer should be, is that right?

A. Substantially.

Q. Mr. Falk, as far as you know, never volunteered to any of the men that he would suggest a lawyer for this Independent Union, did he?

A. In any of the meetings?

Q. At any time, as far as you knew?

A. I don't think so.

Q. Now, you testified that Mr. Hydar had talked the
1480 day before this meeting in 1933, at which Mr. Harold Falk gave a talk.

Do you remember that?

A. Did I say the day before? It might have been two days, I am not sure.

Q. I don't care about that. Before that.

A. He did. If I am not mistaken, he was the first one.

Q. And you related the talk, the substance of what Mr. Falk said.

A. As near as I could remember it.

Q. Will you relate the substance of what Mr. Hydar said?

A. Substantially that there was going to be an election, that they were creating a Works Council to bargain collectively for the men, and they were to elect representatives and explained how it would be, and I believe he told us when we would vote. That is it substantially.

Q. Did Falk substantially repeat, a few days following, what Mr. Hydar had said?

A. He said there was going to be another election, sure.

Q. Otherwise he said in substance what Hydar said? That is away back in 1933. I don't expect you to remember every detail.

A. Well, yes, he talked very much about all these union men's names that were around there. That is, the reason was there. If the election had been just for the men in
1481 the shop, I don't think Mr. Falk would have given a talk.

Q. Harold Falk gave the talk as the result of the first election?

A. That is the way I remember it.

Q. And Hydar gave a talk prior to the first election?

A. That is the way I remember it.

Q. That is correct, is it not?

A. That is the way I remember it.

Q. Did Hydar say that the company had issued any instructions as to who should be elected to the Council as representing the men?

A. You mean, did he name them?

Q. As to describing who?

A. I believe he said they had to work in the plant. Now, I would not be certain. I believe he said that.

Q. You believe he designated the kind of men that should be elected.

A. Men that worked there.

Q. That is, you told the men at the plant that the plan of the Works Council contemplated the election of representatives by the men to meet with the management, and that the representatives elected by the men should be men who worked at the plant?

A. Substantially.

Q. And despite that fact, the men, or at least some
1482 of them, put on the names of outside people, on the ballots, is that right?

A. That's right.

Q. And then, after that, Harold Falk said it was not in accordance with the plan of the Works Council, and that a new election should be held, is that right?

Mr. Rissman: I object to that question. He stated what Harold Falk said, and it is nothing like what Mr. Lamfrom says now.

Trial Examiner Batten: I think this witness can recall what he said. He seems to be perfectly capable of taking care of himself.

Mr. Lamfrom: Sure.

Trial Examiner Batten: Read the question.

(The question was read.)

Mr. Rissman: Pardon me. The testimony of the witness on direct examination is that Harold Falk said nothing like that.

Trial Examiner Batten: Don't you think the witness can recall what he testified on direct examination?

Mr. Lamfrom: And there is a slight possibility that a witness may testify on cross-examination somewhat differently than he did on direct examination. That has been done.

Trial Examiner Batten: That has been done.

The Witness: Will you read the question you asked
1483 me again, please?

(The question was read.)

A. I don't remember him saying that.

Q. (By Mr. Lamfrom) Well, what did he say?

A. That is when he told us that they would not accept any names from outsiders, union or otherwise, on the ballot, they would be thrown away.

Q. Well, Mr. Hydar had stated, previous to the election, had he not, that the election was to be of representatives who were employees of the company, hadn't he?

A. Quite naturally.

Q. So that Mr. Falk's statement after the election was no news to the men?

A. Except to refresh their memory.

Q. That's right. It refreshed their memory. Then the election was held, and, in accordance with the plan, representatives within the plant were elected, is that right?

A. I believe so.

Q. Now, during the time that the Works Council was functioning, and up to the time it disbanded, were there any increases in wages?

A. Oh, yes.

Q. How many?

A. I couldn't tell you.

Q. Well, about?

1484 A. Oh, there must have been two or three.

Q. From 1933 to 1937?

A. Yes.

Q. Were there any changes made in working conditions?

A. Piece work, like that.

Q. How did those changes affect the men, as favorably or unfavorably?

A. Well, I believe they were favorable, what they asked for.

Q. Under the Works Council, the men were permitted, through their representatives, to present their grievances to management, were they not?

A. Supposed to be.

Q. Well, did they?

A. As they could get a chance. There were no meetings or anything held between them. I really don't see how they ever did get the consent of the majority.

Q. Were you ever a representative of the employees on the Works Council?

A. Yes.

Q. Did the matter of individual complaints on the part of workers come up before these meetings at any time?

A. Sure.

Q. And were they disposed of?

A. Yes.

1485 Q. Do you know of any instance where any employee had a grievance or a complaint, that he requested it brought up before the Works Council, discussed and disposed of?

A. I couldn't say I do remember that they were not discussed.

Q. Do you remember any cases of any employee that the—do you remember any cases of any employees at the Falk Corporation during the period that the Works Council functioned where employees or an employee claimed that a grievance or complaint of his was not being acted upon by the Works Council?

A. It might have been acted upon, but they didn't always agree with the result.

Q. That is quite natural, I suppose, isn't it? Now, when the representatives of the men on the Works Council met, they met alone in the first instance, didn't they?

A. That's right.

Q. And the subjects they wanted to take up with the combination of themselves and the management were discussed, is that right?

A. That's right.

Q. And then when the management representatives and the Works Council representatives of the employees met, the matters were discussed again, weren't they?

Mr. Rissman: I object, if the Examiner please. The
1486 constitution and by-laws of the Works Council are in evidence. They outline the entire procedure for presenting grievances.

Mr. Lamfrom: I am asking for the fact.

Mr. Rissman: And holding meetings.

Mr. Lamfrom: I am asking for the fact.

Mr. Rissman: It seems to me if the Council proceeded according to its constitution and by-laws, you will probably have a lot of them.

Trial Examiner Batten: Go ahead.

(Argument on objection.)

Trial Examiner Batten: You may answer the question.

A. Sure, they were discussed.

Q. (By Mr. Lamfrom) You took part in the discussions?

A. Yes.

Q. You expressed your opinions freely?
A. Quite freely.
Q. Your ideas freely?
A. As best I could.
Q. Your purposes?
A. Sure.
Q. There was no feeling on your part, was there, when you participated in these discussions, that the sinister shadow of company domination was thrusting itself in front of you, was there?
1487 A. Why, surely.
Q. There was?
A. There was.
Trial Examiner Batten: If there was, tell us just exactly.
Q. (By Mr. Lamfrom) Just exactly how.
Trial Examiner Batten: That is the thing we have been sparring around about here all morning.
Q. (By Trial Examiner Batten) Just tell us exactly in detail why you felt that the company and its agents was controlling the Works Council, and whether there were any employee representatives on the Works Council who were dummies for the company, who they are, and tell us why you thought they were.
Just tell us the whole story, and we will get it once and for all.
A. There was supposed to be an agency of collective bargaining. We gathered there, and brought up whatever subjects we had. We met first the day before, naturally.
Q. Who?
A. Employee members of the Works Council. And, nine times out of ten, there was decided what would be taken up, the men didn't know until they read the minutes. The following day, we would meet with the management representatives, to discuss the matters, there would be a vote taken, and,
1488 regardless of the vote, the company always decided whether they would grant it or not.
About ten times was brought up the matter of bi-weekly pay days, and we got the same answer every time. I just decided "What is the use of trying to discuss this thing. The men want it. There is no use of bargaining whatsoever. We ask it and they refuse it. Our vote don't mean a thing."
Q. (By Mr. Lamfrom) Is your opinion of collective bargaining this: That the demand made by the bargainers must be granted, or there is no collective bargaining?

Mr. Rissman: I object to his opinion. He was asked to recite the facts, and he is doing that.

Trial Examiner Batten: Pardon my interruption, again, Mr. Lamfrom.

Mr. Lamfrom: Sure.

Trial Examiner Batten: But I want you to give us much more information than you have given, on how this Works Council functioned.

A moment ago you mentioned Mr. Gerard, is it?

The Witness: Greget.

Q. (By Trial Examiner Batten) You said you thought he was connected with the company, I mean friendly with the company. What I want you to do is tell us just why you feel that he, in reality, was representing the company, and not himself, or the employees, what he did to indicate that to
1489 you, and just how you felt about the rest of the employees representatives as well as the men. Tell us the whole story. I presume this thing has been discussed in the shop a thousand times, hasn't it.

A. Oh, yes.

Q. You have heard it discussed?

A. Yes.

Q. The men in the shop have an opinion whether it is of any value or not, haven't they?

A. Surely.

Q. About this thing. What I want you to do is open up your heart. I am giving you this opportunity, and tell us exactly this story.

A. Well, if he won't stop me I can tell it.

Q. Go ahead, and when you get through Mr. Lamfrom can continue with his cross-examination. I want to know.

A. You mentioned this man Greget. I believe that the minutes of the Works Council will show very clearly that, on the majority of names brought up and voted upon, Mr. Greget either voted in opposition or did not vote at all. He very seldom voted the same as the employee representatives did. There was another one on—

Mr. Lamfrom: Just this interruption:

Q. (By Mr. Lamfrom) Was Greget a management
1490 representative?

A. He was an employee representative while I was there.

Q. He was elected by the employees?

A. That is right.

Q. He was their representative?

A. Supposed to be.

Mr. Lamfrom: All right.

A. (Continuing) At one time we discussed in our private employees-only meeting the matter of disbanding, or resigning. We all decided pretty unanimously that we had got about all we could get out of it, and we would give it up.

The next day I called Mr. Harold Falk into the meeting or asked that he be called, and was the spokesman, and said we had decided to give it up as a bad job.

Mr. Lamfrom: Just an interruption to get the sequence here.

Q. (By Mr. Lamfrom) When was this?

A. I couldn't tell you. It was in the minutes.

Q. What year?

A. It may have been '33, '34 or '35.

Q. It is somewhere earlier?

A. Prior to 1937, yes. And my good friend, Mr. Joseph Trost, said "Well, if the company doesn't want to keep it up any more, I will resign."

In my opinion, as a man there representing the em-
1491 ployees, and the employees only, the common talk in the shop is, or was at the time, that the Works Council is absolutely no good, it is company-dominated.

Q. Have you opened up fully your heart to the Examiner on this subject?

Mr. Rissman: Don't interrupt him, Mr. Lamfrom.

A. If I would study, I think, a few minutes, I could talk for a week.

Q. (By Mr. Lamfrom) Go ahead. You are all heart. You are showing your feelings quite well in the matter.

A. Absolutely. I once left the Works Council for the very purpose that one of my fellow employee representatives was discharged, and I never did get a satisfactory accounting. We called Mr. Pritzloff in our meeting, tried to get it, and when it came down to the matter of taking a foreman's word or this individual's, why, Mr. Pritzloff admitted that he naturally would take the foreman's word, and I said "So long as it is the case of that, why don't you give the man the benefit of the doubt, and give him another chance?"

He said "He will never work here again." Right then and there I thought of a little clause in the constitution, whereby my independence was guaranteed. I didn't think so much of that, and I offered my resignation at the following meeting.

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They voted not to accept it, and I said "You can vote
1492 from now until Christmas, I am through", and I walked out, and I didn't go back for three or four months.

Some time later I was renominated at a primary election, and another employee representative by the name of Bill Stickman, William Stickman, him and I both agreed we wouldn't take it again, he didn't like it either, and he said he wouldn't accept the nomination.

When we were both of us renominated, I flatly refused it, and said "Hold another election according to the by-laws." I believe he refused it too, and according to what he told me, Mr. Pritzloff, the foundry superintendent, approached him and said "Don't you know, Bill, it costs about a hundred dollars to hold another election?" "All right, then, I will take it."

In other words, his own ideas didn't mean much, but what Mr. Pritzloff told him as his superintendent, he said, "I know what's good for me", and he accepted the job.

All those things go to stick together in my mind.

Q. During all this period that the Works Council functioned, from 1933 on, there was no labor trouble in the plant, was there?

A. Right at the start there was a little bit.

Q. What was that?

A. Quite a few of the boys signed up in the Federation of Labor.

Q. When? About 1933?

1493 A. Yes. Is that what you are referring back to?

Q. Did you?

A. I did, I believe I did.

Q. And as a result of that, what happened?

A. Well, as a result, it seems to me that Mr. Oristo lost his job, because he got up as spokesman at one of the meetings and gave the stool pigeons, as he called them, a kind of a snootfull, and it was very shortly after that, that his connection was severed with the company.

Q. And you continued your union membership?

A. For a time I did.

Q. Were you interfered with in any respect?

A. I was not.

Q. Because you belonged to the union?

A. No.

Q. How long did you continue your union membership?

A. I don't remember.

Q. Approximately?
A. Six months, I think.
Q. And later on you gave it up?
A. It died out in the shop, there was no use to keep on.
Q. Why?
A. Because I wanted to belong to whatever the majority belonged to. They—if they didn't want that, I didn't either.
Q. Do you think the majority in the plant honestly
1494 didn't want a union?
A. I didn't say that.
Q. Anyway, the majority in the plant didn't seem to want any union, did they?
A. Just as quick as Mr. Oristo lost his job, that was just like throwing water on fire there, union spirit died right out.
Q. You did everything you could in the Works Council to cooperate with your fellow employees, didn't you?
A. I did.
Q. There were others that did the same thing that you did?
A. Some of them.
Q. Have you mentioned all of those?
Mr. Lamfrom: Am I interrupting the Examiner?
Trial Examiner Batten: No, no. Go ahead.
Q. (By Mr. Lamfrom) Have you mentioned all those that didn't appear to, in reality, represent their fellow employees, or are there some more?
A. There were several there, I don't even know if I recall their names. They never agreed or wanted to give the men this or that, they didn't think it was a good idea. Some of them never even said hardly a word there, in the one year that I know them.
Q. These elections of the representatives, how were they carried out? I am referring to the elections of the rep-
1495 resentatives of the men? Was that a secret ballot?
A. Yes.
Q. And the men could elect anyone they wanted?
A. They first nominated anybody they desired.
Q. Then the person elected held office for how long?
A. About a year I believe, or so.
Q. Then another election was held?
A. That's right.
Q. The election was perfectly free?
A. Yes.
Q. And open?

A. Surely.

Q. And if the employees were dissatisfied with the action of any representatives, it was open to the employees to elect somebody else, was it not?

A. They showed it on the ballot.

Q. Beg pardon?

A. They would show it on the ballot.

Q. They would show it on the ballot. Were the proceedings of the Works Council, and the determinations which were reached on questions which came up before it, pretty well known throughout the plant?

A. When the minutes were issued, the men became aware of them.

Q. Everyone of them got a copy of the minutes?

1496 A. Supposed to, yes.

Q. And the minutes showed, didn't they, how the employee representatives had voted on questions?

A. I don't know if it put the names down.

Q. Not necessarily the names.

A. Yes, it showed how the vote was, yes.

Q. And the employees in the shop were quite fully informed of matters that came up, and how they were determined, weren't they?

A. They were.

Q. And, if they were dissatisfied with any one of their representatives, they could, as I said before, elect another representative?

A. They had no way of knowing that they were dissatisfied.

Q. There was no way of knowing?

A. Very little, that I know.

Q. They could have turned them all out, couldn't they?

A. Oh, yes.

Q. Were there discussions among the employees prior to these elections as to whom they wanted to act as their representative?

A. Yes.

Q. Were the employees interested in that?

A. Very little.

Q. Why very little? I mean, just describe the condi-

1497 dition which leads you to that conclusion.

A. Because, while I was a member, I would say 90 per cent of the men I talked to said it was no good, they were not interested, they couldn't get nothing anyhow.

Q. You did everything you could to accomplish the things for the best interests of your associates, didn't you?

A. I did.

Q. And there were others that did it?

A. Yes.

Q. And, in electing you, the employees, I presume, thought they had elected a good, vigorous, capable representative?

A. I believe they elected me because I engaged in a lengthy discussion with Mr. Falk on union, the night he gave the talk.

Q. I was referring to any disturbances or labor troubles within the plant, during the years that the Works Council functioned, and you began to tell about some organization, and then that the organization was dropped, or the men dropped the organization.

Was there anything else that disturbed the tranquility of the relations between the Falk Corporation and its employees during those years?

A. No, outside the dissatisfaction with the results of the Works Council, there was no labor trouble—

Q. The relations—go ahead. I didn't mean to interrupt you.

1498 A. I was going to say there was no labor trouble I know of.

Q. No strikes?

A. No.

Q. Or lockouts.

A. No.

Q. Or walk-outs?

A. No.

Q. Or quitting work?

A. No.

Trial Examiner Batten: Or sit-downs.

Q. (By Mr. Lamfrom): Or sit-downs?

A. No, no.

Q. The relations between the company and the men were friendly and amicable, weren't they?

A. I think, in a large sense, yes.

Q. Now, then, your idea in cooperating with the other men in this independent organization was to establish an organiation within the plant that had outside representatives speaking for them, is that right?

Mr. Rissman: What time are you speaking of now?

Mr. Lamfrom: When he started to be interested in the formation of the Independent Union.

Mr. Rissman: The present Independent Union?

Mr. Lamfrom: Yes.

The Witness: That is why I asked Richard Falk per-
1499 taining to it.

Q. (By Mr. Lamfrom.) And Richard Falk said there would be no objection to that, didn't he?

A. I believe that was his answer.

Q. So that you then knew, from someone connected with the management, at least from Mr. Harold Falk's son, that the company had no objection to that sort of a plan?

A. I didn't know if the company objected to it or not.

Q. You asked Richard Falk, didn't you?

A. Yes.

Q. And you thought from him you would get an answer that would lead you to a conclusion whether that would be satisfactory to the company, didn't you?

A. On a point of law, that is what I had reference to. He is not running the Falk.

Q. I understand that. But on the point of law, you asked him whether or not it would be all right for the men to have outside people?

A. That is what I mean.

Q. You mean whether it would be all right in accordance with the law?

A. That is my idea.

Q. You knew, didn't you, that the law provided that the employees could be represented by representatives of their own choosing in collective bargaining, didn't you?

1500 A. I am not so sure that I knew it then, and I wanted to find out. That is why I asked it.

Q. Hadn't you heard of the Wagner Law?

A. I believe I have.

Mr. Rissman: Some people haven't.

Mr. Lamfrom: You keep quiet.

Q. (By Mr. Lamfrom.) Hadn't you heard of the Wagner Law?

A. I believe I have, yes.

Q. Hadn't you heard of Section 7 (a) of the National Industrial Recovery Act?

A. I believe I had.

Q. Didn't you understand that, from 1937 on, the principle of Federal law enacted by Federal statute, provided em-

ployees could choose representatives of their own choosing, to represent them in collective bargaining, and that any interference on the part of employers, at least after the Wagner Act was passed with that provision, was unfair labor practice?

Didn't you know that? You are an intelligent man.

A. It sounds very clear as you relate it, but, when the lawyers and the government don't agree in their interpretation, how do you expect me to give it to you?

Q. Lawyers don't agree on what?

A. Section 7-A of the Wagner Law.

Q. Where did you get the idea that the lawyers disagreed on the interpretation of Section 7-A?

1501 Mr. Rissman: I object to that.

Mr. Lamfrom: Just a minute.

Mr. Rissman: Can't I make an objection?

Mr. Lamfrom: You can make twenty.

Mr. Rissman: One is enough. He is asking his conclusions, as to his understanding of legal problems.

(Discussion on objection.)

Trial Examiner Batten: I will sustain the objection. I suppose he would really know better than to go to a layman for advice on law.

Mr. Lamfrom: It seems to me, Mr.—

Mr. Rissman: Now, Mr. Lamfrom is going to—

Mr. Lamfrom: Just a minute. Some day, when you get a little older in the practice, you will have the courtesy to wait until a man finishes his statement.

Mr. Rissman: Not by any example set here.

Q. (By Mr. Lamfrom.) You were instrumental in the formation of this Independent Union, weren't you?

A. If you could call it such.

Q. And, in connection therewith, you asked Harold Falk whether it would be all right to have outside representatives for the men, didn't you?

A. That was Richard Falk.

Q. That was Richard Falk, is that right?

A. That's right.

1502 Q. And the reason you asked him that was that you wanted to be informed as to your legal rights?

A. Merely get his opinion.

Q. Did you think it was necessary for the C. I. O. people to ask the Falk Corporation whether it was permissible for the employees of the Falk Corporation who were represented by the C. I. O. to have C. I. O. representatives?

Mr. Rissman: I object to the question. It is entirely immaterial what anybody else thought, giving his reason for his action.

Trial Examiner Batten: I think the question is whether or not this witness felt it was necessary for the C. I. O. to ask the advice of The Falk Corporation.

Mr. Lamfrom: Yes.

A. By the time I came to speak as a representative of our C. I. O., I was very well informed, I think, as to the fact that we could choose who we wanted, and this and that.

Q. (By Mr. Lamfrom.) And before that, you didn't know anything about it, did you?

A. I had monkeyed with it. I had read it.

Q. You were pretty well convinced, weren't you, that your legal right—

A. In my own mind.

Q. Just a minute. (Continuing.) —that your legal right was to choose your own representatives for collective
1503 bargaining with the Falk Corporation, wasn't it?

A. In my own opinion, yes.

Q. Then why did you want to find out from Mr. Falk what, as a matter of law, you might want to do with the Independent Union?

Mr. Rissman: I object. He has answered the question three times. He stated he wanted Richard Falk's opinion.

Trial Examiner Batten: If he has answered it three times—

Mr. Lamfrom: A fourth won't hurt him.

Trial Examiner Batten (Continuing): —one more won't do any harm.

A. About the same thing, sure, to find out their opinion on it, in regard to an Independent Union.

Q. (By Mr. Lamfrom.) What difference in your mind was there between a so-called independent union and the American Federation unions and the C. I. O. union?

A. What is the difference?

Q. Yes, in your mind.

A. Oh, in that respect I don't suppose there is much difference. I had never thought of it in connection with an independent union.

Q. You were in favor of an independent union, weren't you?

A. No,—originally, yes. Not then.

Q. Except when you asked Falk about it?

1504 A. I was beginning to be swayed.

Q. What was that?

A. I was beginning to change my mind, in other words.

Q. When you asked Richard about it?

A. Yes.

Q. Your mind was beginning to be swayed by the fact that you thought the corporation had a hand in it, is that right?

A. Partly, yes.

Q. And you wanted to find out from Richard whether you could erect or build an independent union which would be free from company domination or participation?

A. Substantially.

Q. And you thought you could establish that by outside representatives?

A. Just about that, yes.

Q. Then you went on with the boys, didn't you, in the organization? When did you first learn that this organization was not, as far as the employees were concerned, to be represented by outside people?

A. The Independent Union was not to be represented by outside people?

Q. Yes, when did you first learn that?

A. About four seconds after I said it.

Q. After you said what?

A. After I asked Mr. Falk, and he answered.

1505 Q. And then, after that, you did nothing with reference to the organization of this Independent Union?

A. No. The majority of them were opposed to the idea. I couldn't force it on them.

Q. But you went ahead and had some meetings after that?

A. I certainly did.

Q. Attended meetings.

A. Yes.

Q. Participated in the discussion?

A. At their request.

Q. Took application blanks?

A. Yes.

Q. Why did you do all of those things if you had become convinced that the Independent Union was not the kind of union you wanted?

A. I said I was becoming convinced.

Q. You were becoming convinced.

A. Yes. I still had hopes of changing their mind.
Q. When was the time when you arrived at the point where you became convinced?
A. I can't name any certain moment.
Q. You are sure that during all these times that you were active in the preliminary steps in the formation of this organization, that you were not in Communication with any of the C. I. O. people?
1506 A. I was not.
Q. And you had not been approached by the C. I. O. people?
A. I was approached by the Sunday meeting, yes.
Q. The first time?
A. Yes, I believe it was—
Q. Yes?
A. Let's see now, I believe it was on Friday.
Q. You attended the meeting at the plant on April 12th, at 12:30, due to the fact that you were notified by your wife that Mr. Hydar had been up there?
A. Right.
Q. Did you think there was anything unusual about your being requested or invited to a meeting?
A. Unusual? It seemed unusual, I hadn't been to any for a year or so.
Q. You hadn't what?
A. I hadn't been attending regular meetings then.
Q. Regular meetings of what?
A. Of the Works Council.
Q. Did you think this was a meeting of the Works Council?
A. I believed, from conversation I had with several men from the Works Council, when my wife told me that, I recalled that something was said about starting another type of union.
Q. You knew when you went down there that probably that was going to be the subject of the discussion, didn't you?
1507 A. Yes, I believed I recollected.
Q. You were interested in that subject at that time?
A. Naturally.
Q. You found about 20 to 23 members, or former members of the Works Council there, didn't you?
A. Yes.

Q. And the discussion was around the question of how to start an independent union?

A. Yes.

Q. What suggestion did you make?

A. Thursday, to be perfectly frank, I don't recall my own suggestions in it.

Q. Did you participate in the discussion?

A. Oh, yes. I do remember somebody sitting across from me talking about the shop getting with the C. I. O.

Q. Some of the boys talked that?

A. Yes. I remember hearing that.

Q. That didn't cause you to change your interest in it?

A. No. But merely because they was sitting right across from me.

Q. Beg pardon?

A. Merely because they were sitting right across the table from me, that is how I remember that I heard it.

Q. What was decided there?

A. I don't remember what the wind-up was. They 1508 talked of different ways, and how to go about it, and such subjects.

Q. This question of the raise wasn't discussed there, was it?

A. I don't think so.

Q. When was that discussed?

A. I believe it was the following day. It might have been the first day. I wouldn't say for sure.

Q. The raise which the management had agreed to give had been obtained through the Works Council, hadn't it?

A. I believe so, the original raise.

Q. That was going to be effective June 1st, is that right?

A. Yes.

Q. At a meeting of the men interested in the Independent Union the following day, the question of the raise came up. That is right, isn't it?

A. I don't know whether it was the first day or the following day, I don't remember.

Q. Let me go back to this meeting of April 12th for a minute, and ask you whether you in any manner made any suggestion or offered any hope, in the question of the organization of an independent union?

A. I talked as much as any of the rest.

Q. You talked quite a good deal, didn't you?

A. Sure, I talked as much as any of them around there. I wasn't bashful.

1509 Q. You were really interested in the subject, weren't you?

A. Sure.

Q. That being the case, tell us some of the things you said about the organization of the Independent Union?

A. I can't recall offhand. I am as much interested as anybody in the welfare of the men, and it was a general discussion on what kind of union, and how good the C. I. O. was, and the expression was frequently expressed, as to one liked it and one didn't like it, there was more or less talk of the faults of different unions.

Q. That is, the discussion was around the question of what would be the best kind of an organization for the Falk employees?

A. Yes.

Q. Was the prevailing opinion there that an independent union would be better than the C. I. O.?

A. I believe that is the way it wound up.

Q. Did you have that opinion, and express it?

A. I don't believe I expressed it.

Q. You didn't express any opinion?

A. I don't think I did.

Q. What was the ultimate conclusion of that meeting, what was left to be done?

A. Now that you speak of it that way, I believe that is the one Mr. Harold Falk was at.

1510 Q. April 12th, I am talking about.

A. Yes. We decided to meet again the next day.

Q. You decided to what?

A. To meet again the next day.

Trial Examiner Batten: Mr. Lamfrom, I believe this will be a good place to adjourn.

Mr. Lamfrom: I am perfectly willing.

Trial Examiner Batten: We will adjourn until 1:30.

(Thereupon, at 12:30 o'clock P. M. a recess was taken until 1:30 o'clock P. M. of the same day.)

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 460

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 12, 1939

CERTIORARI GRANTED NOVEMBER 13, 1939

IN THE

United States Circuit Court of Appeals

For the Seventh Circuit

No. 6707

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

THE FALK CORPORATION,

Respondent.

Counsel for Petitioner:
MR. CHARLES FAHY,
MR. ROBERT B. WATTS,

Counsel for Respondent:
MR. LEON B. LAMFROM,
MR. A. J. ENGELHARD,

Petition for Enforcement of Order of National Labor Relations Board.

J-14615 The Gunthorp-Warren Printing Company, Chicago—8-17-38—85

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1511 After recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock P. M.)

Trial Examiner Batten: All right, gentlemen, I think we will proceed.

HAROLD LANDRY, a witness called by and on behalf of the National Labor Relations Board, previously sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued.)

Q. (By Mr. Lamfrom.) Now, at this meeting of April 12th, at some time or other Mr. Falk was present?

A. I believe.

Q. Take your hands away, will you, so I can hear you? I can't hear you.

A. I believe.

Q. And some conversation was had between him and Mr. Wilfer?

A. As I recollect.

Q. State your best recollection of what Mr. Wilfer said.

A. I believe I have.

Q. (By Trial Examiner Batten.) Well, this is cross-examination. He is asking you, Mr. Landry, to state what Mr. Wilfer said.

A. O. K. I said, as I recollect it, Mr. Wilfer made the suggestion that if the raise were moved up from June
1512 1st until May the 1st, would keep a lot of men from joining the C. I. O.

Q. (By Mr. Lamfrom.) By making the suggestion, do you mean that Wilfer asked Mr. Falk that question? You answered my question in sort of the form of a question.

State what Mr. Wilfer said. I want to get this clear. Did Mr. Wilfer ask Mr. Falk that, or did Wilfer make the suggestion to Mr. Falk?

In other words, what did Mr. Wilfer say?

A. It might have been slightly different. I didn't record the exact words.

Q. I don't care for the exact words. Just state in substance what Wilfer said, and to whom he said it.

A. That is very much the substance of it.

Q. And to whom did he say it?
A. Mr. Falk. "If you push the raise up a month, I think it will keep a lot of fellows from joining the C. I. O."
Q. "If you will push the raise up a month", he thought, Wilfer thought that it would keep a number of men from joining the C. I. O., is that it?
A. I wouldn't swear that he thought it. I didn't mark down the exact words.
Q. Have you given the substance of what Wilfer said, now, to the best of your recollection?
A. That is about the size of it.
Q. Do you know how Mr. Falk happened to be at this meeting?
1513 A. I believe he was requested to be there.
Q. By whom?
A. I couldn't say.
Q. Was it done in the open meeting?
A. Yes.
Q. Nobody objected to it?
A. No.
Q. And when Wilfer said that to Mr. Falk, what did Mr. Falk say?
A. "It may possibly be. We are not so stiff that we can't bend a little. If that is the way the boys think about it, I think we can make it May 1st."
Q. Do you know what Mr. Falk meant when he said "If that is the way the boys feel about it"?
A. I formed my own opinion.
Q. What was your own opinion?
A. That if given the raise a month earlier, it would keep them from joining the C. I. O., that would be a very good reason for pushing it a month ahead.
Q. That was your own opinion?
A. That was my own opinion.
Q. Did you discuss that opinion with any of the others?
A. At that meeting?
Q. Yes.
A. I don't know if I did or not. I probably did.
1514 Q. You think you did?
A. I probably did, because it stuck on my mind.
Q. It stuck on your mind that Mr. Falk was willing to bend if, as we suggested, he could keep the boys from joining the C. I. O.?
A. That is the way it registered in my mind.

Q. At that time did you have any revulsion of feeling that would indicate to you that the Independent was not going to be independent of the company?

Mr. Rissman: I object to the question, and the form of the question. It is entirely improper, as to what his feeling was.

Mr. Lamfrom: But you asked him plenty about his feeling.

Mr. Rissman: I object to the form of the question.

Trial Examiner Batten: I think he may answer the question as to whether or not at that time he had any particular hard feelings in the matter.

Mr. Rissman: That is a different question.

A. I believe the question put to Mr. Falk, and the answer, was sufficient to create an impression on my mind.

Q. (By Mr. Lamfrom.) Had you arrived then at the sequence of your impressions which led you to think that, after all, you had better quit this so-called independent organization, and go over to the C. I. O., or, were you waiting
1515 for more and further evidence of a company tie-up?

Mr. Rissman: I object to the form of the question.

Trial Examiner Batten: He may answer.

Mr. Rissman: There are three questions in one.

A. To be frank, I don't know what the word "sequence" means.

Mr. Lamfrom: Let me explain that.

Q. (By Mr. Lamfrom.) Were you satisfied at this time that there was enough evidence that there was some tie-up between The Falk Corporation and the organization of the Independent Union to lead you to believe that it would be better for you to join the C. I. O., and drop this Independent?

A. That was the first doubt, that was the very beginning of doubt in my mind.

Q. That was the first doubt created.

A. Yes.

Q. That was, of course, before someone had suggested that Mr. Falk might be interviewed, to suggest an attorney.

A. It was before, I believe.

Q. Now, then, didn't Mr. Falk say anything else at this meeting of April 12th?

A. He may have.

Q. Do you remember anything else?

A. He was asked a question.

Q. Yes.

A. I don't recall the question, I don't recall who
1516 asked it, but I do remember he answered that he couldn't give us advice on the subject.

Q. You don't know what the question was?

A. I don't. I have tried to think, but I don't recall. All I can recollect is his answer.

Q. But you do recollect that Mr. Falk stated, in answer to whatever the question was, that he could not give you any advice?

A. That's right.

Q. Did he say anything about the law not permitting him to give any advice?

A. He may have, I wouldn't say.

Q. You wouldn't recollect?

A. I wouldn't recollect.

Q. But you do remember distinctly the statement?

A. That's all I recollect, is those words.

Q. Now, did he say anything else?

A. I don't remember.

Q. Now, it was about that time that some of the men also said that the Independent didn't look so good because Falk was sticking his nose in there, wasn't it?

A. I don't know.

Q. Didn't you testify this morning that at some time at or after this meeting, some remark of that kind had been made?

1517 A. After the meeting, yes.

Q. After Falk had left?

A. That's right.

Q. And while the meeting was in session, someone said he didn't like the set-up because Falk was sticking his nose in it?

A. I believe I said it.

Q. You believe you said it. Was that commented upon by any of the other men present?

A. I don't remember.

Q. You made the remark which we have indicated in the question and answer, and you don't remember whether anybody else said anything about it at all?

A. Those present at the meeting, you are speaking of?

Q. Yes.

A. Why, I believe I—I didn't think it was right, I believe I expressed that opinion, but I wouldn't swear for certain that was at that meeting.

Q. That was quite an important matter, wasn't it?
A. I considered it as such.
Q. Yes. That is, you were giving to the rest of your fellow workers assembled the idea you thought there was something that wasn't right about this thing, weren't you?
A. I gave them my impression.
Q. Now, you don't remember whether anybody com-
1518 mented upon your statement giving your impression, do you?
A. I don't recall.
Q. You don't recall?
A. They may have. I don't say they didn't.
Q. But you don't recall whether they did?
A. I don't.
Q. Now, on April 13th, there was another meeting that you attended. Do you remember that?
A. Yes.
Q. Did Mr. Harold Falk at any time attend that meeting?
A. I don't remember him being there.
Q. You don't remember him being there?
A. No.
Q. Do you remember whether Richard Falk was there?
A. I believe he was. Now, I wouldn't answer for certain. He was at some meeting that I was at. I don't know if it was that one, or the next day.
Q. You were having a good number of meetings, and you can't just remember all the details?
A. That is in April.
Q. Now, at that meeting, or at a subsequent meeting Richard Falk was there, wasn't he?
A. Yes.
Q. Do you know who called him?
A. I don't.
1519 Q. He didn't just walk in, did he?
A. I couldn't say if he was called or not.
Q. You don't know?
A. I don't, to be honest with you.
Q. Some conversation was had with him by some of the men?
A. Yes.
Q. Now, state what the conversation between the men and Richard Falk was?
A. I don't remember the questions that he was asked. I do remember him saying something about it costing $5 to

incorporate an independent union, and that three men would be necessary to sign the papers of incorporation.

Q. Do you recall anything else he said?

A. Yes.

Q. What?

A. In answer to a question I asked him. Do you want the question, or just his answer?

Q. Go ahead, just as you want to put it.

A. It was where I was trying to get something there that the men would like, I asked him if it would be possible to have outside representatives or officers to represent this independent union, we could vote for them, and he replied that he believed that we could.

Q. Was that question—was that conversation pursued any further, or was that the end of it?

1520 A. I think that was the end.

Q. How long did Richard Falk remain at the meeting?

A. I don't know.

Q. Well, he wasn't there for any length of time?

A. He wasn't there very long.

Q. When was the next meeting that Mr. Harold Falk was present?

A. I don't know that he was at any more.

Q. Do you remember any conversation that you had with Harold Falk after this meeting of April 12th, or the one of April 13th?

A. I have had many conversations with him.

Q. Well, respecting this particular question affecting the organization of the Independent Union.

A. Well, he approached me in the shop a day or two later.

Q. After what?

A. To be perfectly frank, it was after May 5th. Now, he may have talked to me before that. I have had many conversations, you understand.

Q. I understand. You and Mr. Falk have been very friendly, haven't you?

A. Fairly.

Q. I mean, you have exchange greetings.

A. We have exchanged greetings.

Q. And conversations.

1521 A. That's right.

Q. And views?

A. Oh, yes.

Q. Referring, however, to the time that these meetings were occurring, did you have any conversations with him, or were you present at any time of any conversation?

A. I had one very short conversation with him.

Q. Where was that?

A. I believe it was the day that two meetings were held.

Q. Two meetings were held. That was the 14th, I believe?

A. I don't know the date, I don't remember the date.

Q. Where did you have this conversation with him?

A. Right near my machine.

Q. What was the conversation?

A. We had been contemplating—the conversation??

Q. Yes.

A. Oh, I asked him "What did you find out?" He said "I just told the boys. Go back out in the meeting and get it straightened out, or settled."

Q. Get what straightened out, or settled?

A. You asked me the conversation, I just answered the conversation.

Q. I don't understand you yet. He said something, to go out and get it straightened?

Mr. Risaman: I object.

1522 A. You asked me the incident leading up there to the conversation.

Mr. Rissman: Just a minute, the question calls for the conversation, and the witness answered it. If Mr. Lamfrom wants to inquire further, he should not try to put it this way.

Mr. Lamfrom: I confess I am puzzled, when I ask for a conversation, and the witness repeats that somebody said "Go out and get it settled up." By "conversation," I mean an exchange of words between two parties.

Trial Examiner Batten: I presume you could ask him what it meant, I don't know.

Mr. Lamfrom: I don't understand it.

The Witness: I have been cautioned several times to answer the question, and I am trying to.

Q. (By Mr. Lamfrom.) Go ahead.

A. You asked me the conversation. I gave it to you.

Q. Harold Falk said something to you?

A. That is what he said, what I told you.

Q. In other words, while you were working in the shop, he came up to you and said "Go out to the meeting and get it settled," something like that?

A. I walked over to him, about 10 feet from my machine,

and I said "What did you find out?" He said "I just told the boys. Go out to the meeting with them, and get it straightened out."

1523 Q. And when you asked him what did he find out, what did you refer to?

A. I don't remember what it was.

Q. You don't remember that now?

A. I honestly don't remember. It was something in connection with this incorporation, or some of that stuff.

Q. You do remember that you asked him "What did you find out?" But now you don't remember what you were asking him what he found out about?

A. That is absolutely correct. At that time I did know what I was referring to, but I have since forgotten.

Q. You haven't the slightest idea now what it was, have you?

A. I haven't, although I believe it was something with reference to this incorporation.

Q. You were interested enough to go to Mr. Harold Falk as he was passing through the plant, as I understand, and ask him "What did you find out?" and he said "Go out to the boys," and so forth.

Trial Examiner Batten: I don't think there is any testimony that he went up to Mr. Harold Falk, Mr. Lamfrom.

Mr. Lamfrom: I thought he said that.

The Witness: I did.

Q. By Trial Examiner Batten.) You went up to him?

A. Yes.

1524 Mr. Lamfrom: Yes.

The Witness: Pardon me. If I may be permitted to explain the events leading up to that, instead of merely answering your questions, I believe I could put it clearer.

Q. (By Mr. Lamfrom) Suppose you let me handle it, for the present, in my own manner.

A. Proceed.

Q. It is right, then, is it, that this incident was as follows: That while you were working in the plant, Mr. Falk was passing through the plant.

A. That's right.

Q. And you went up to him and asked him "What have you found out?" And Mr. Falk said—repeat what he said, will you please?

A. "I just told the boys. Go out in the meeting with them, and get it straightened out."

Q. And that is all the conversation that took place between you?

A. He kept right on going then. He had been—well, all right.

Q. Go ahead.

A. He had been talking. The reason I went to him, we had been in meetings previous, and we were waiting for him to come back with some information regarding the incorporation, or something, to do with the Independent Union.

1525 He didn't arrive, and we waited a considerable time, and we decided to go back out in the shop. I wasn't at my machine more than a short time when Mr. Falk came in, he was talking to some of the other men just about ten feet from where I work now, I imagine regarding the subject.

Q. I don't care for your imagination.

A. All right. He was talking to them.

Q. Yes.

A. One of them, I know, was Stanley Adamski, and I believe Johnnie Mitchka was there; and just as I walked over there, he had apparently finished talking to them, because he started to walk away, and I naturally said "What did you find out?"

Q. And now you know what you were asking him?

A. I don't. Didn't I say I don't know?

Q. Yes, that is what you said.

A. All right.

Q. But it seems to me quite apparent that you did know.

A. It is not.

Q. Did you have any further or other conversation with Mr. Falk about this time?

A. Not that I remember.

Q. Do you remember any other meetings other than those you have testified to that Mr. Falk attended?

A. I don't think he attended any more, as far as I remember.

1526 Q. That's all I can ask you for. You have testified, if I am correct, that Mr. Harold Falk attended one meeting.

A. Yes.

Q. Then you didn't see him at any other meeting?

A. Not at a meeting.

Q. You also testified that Mr. Richard Falk attended at one meeting?

A. That's right.

Q. And you didn't see him at any other meeting.
A. I don't think so.
Q. Was there any other official of The Falk Corporation at any of these meetings?
A. Not that I recall.
Q. Was Mr. Connell there?
A. He may have been. I don't recall it.
Q. You don't recall of any of them?
A. I don't.
Q. But you wouldn't say, of course—
A. They may have been there.
Q. (Continuing)—that they were not there, or were not called in? You don't know?
A. I don't know. I don't remember them being there.
Q. After these meetings on April 14th, you went down to Mr. Burke's office with a committee. That is right, is it not?
A. I don't remember the date I went down there.
1527 Q. That was shortly after April 14th, wasn't it?
A. I don't recall the date. I did go with the committee that went to Mr. Burke's office.
Q. And you have testified to certain conversations that took place at Mr. Burke's office.
A. I believe so.
Mr. Lamfrom: Take the witness.
Q. (By Mr. Clark) You said you joined the C. I. O. in the week of April 11th. Can you place the date?
A. I can't; the latter part of the week.
Q. Now, after these meetings at the Falk plant, you went to the office of Alexander, Burke & Clark?
A. That's right.
Q. And what time of day was that?
A. I believe it was about 10 o'clock in the morning.
Q. And how many was in that party that came there?
A. I couldn't say; about ten I believe.
Q. If I name these men, would you tell me whether these men were there?
A. I will try to.
Q. Mr. Kirsch?
A. I believe he was.
Q. Mr. Mitchka?
A. Yes.
Q. Mr. Greget?
1528 A. I believe he was.

Q. Mr. Adamski?
A. Yes.
Q. Mr. Trost?
A. Yes, sir. I wouldn't swear for certain on him.
Q. Mr. Dan Martin?
A. I don't know him.
Q. Mr. Wolf?
A. I think Mr. Wolf was there, yes.
Q. Mr. Krueger?
A. That's right.
Q. And Mr. H. Jones?
A. Yes.
Q. And yourself?
A. Correct.
Q. Now, who was the spokesman for that committee, do you remember?
A. I doubt if there was any.
Q. You asked some questions, didn't you?
A. I believe we all did.
Q. And you heard what happened there?
A. I believe so.
Q. Now, besides the ten that have been mentioned, who else was in the room?
A. Mr. Burke,—and yourself? I couldn't swear; 1529 some other attorney; I believe it was you.
Q. Don't you remember me being there?
A. I remember another attorney. I don't recollect that it was you. It may have been. I am not saying it wasn't.
Q. He didn't make much of an impression.
A. He didn't.
Q. Do you remember, Mr. Landry, at that time asking what right these men had to form an independent union?
A. I don't remember it. I may have asked it.
Q. Do you remember the other attorney, whose name you don't know, reading from the decisions of the United States Supreme Court that were handed down two days before that?
A. I can't say as I could say it was exactly that. I don't remember what it was.
Q. Do you remember this other lawyer explaining his version of the Wagner law?
A. Yes, I do believe I remember that.
Q. Don't you remember his citing and reading from decisions out of a paper pamphlet?
A. I don't know what they were read out of.

Q. You remember some explanation of the Wagner law as outlined in those decisions of the United States Supreme Court?

A. Yes, I believe they were in connection with the Independent Union.

Q. And the statement was made at that time by Mr.
1530 Burke that you could form or join any union you wished, is that right?

A. I believe so.

Q. And a general discussion was had as to how the matter was to be set up?

A. That's right.

Q. Now, on the day you were at the office of Alexander, Burke & Clark, can you fix the date?

A. I can't.

Q. Was it the 14th of last April?

A. I wouldn't say what date it was.

Q. With reference to the last meeting under the hospital, at the plant, what day was it?

A. I wouldn't attempt to say. I didn't take much—pay much attention to the date. I paid more attention to the fact.

Q. What fact did you pay attention to?

A. Such as I have been relating.

Q. Was the question as to the form of the organization taken up at that meeting?

A. Which meeting?

Q. At our office, Alexander, Burke & Clark's office.

A. Whether it was to be incorporated, for an association?

Q. Yes.

A. I believe it was discussed.

1531 Q. Was there anything said about a name to be given to this organization?

A. Yes.

Q. Who suggested the name, if you know?

A. Everybody suggested one, pretty near.

Q. And everyone seemed to be of the opinion that it should be called the Independent Union?

A. That was the final wind-up.

Q. And that included you?

A. I suggested something, that the name started "Amalgamated," some way.

Q. Why did you suggest "Amalgamated"?

A. I wanted it to sound good.

Q. You wanted it to sound like the organization that you had been belonging to?

A. A kind of bona fide name.

Q. Please answer my question.

Mr. Rissman: I object to that question. There is no testimony that he belonged to any organization.

Trial Examiner Batten: What was the question, please?

(The question was read.)

A. I didn't belong to any organization at that time.

Q. (By Mr. Clark) Had you been solicited for the Amalgamated Association of Iron, Steel and Tin Workers?

A. I had not.

1532 Q. Had you heard the name?

A. Oh, yes.

Q. Then that was the reason you suggested "Amalgamated" in this name, was it?

A. I didn't say it was.

Q. What was it?

A. I thought "Amalgamated" was a fine name.

Q. Now, Mr. Landry, what if any discussion did you have at that meeting in the office of Alexander, Burke & Clark?

A. I just got through saying that I suggested that name.

Q. What else?

A. To be frank, I don't know what else. We all was talking more or less there, how long this would take, and that; and how much it would cost to incorporate, and who was going to sign it and where it had to go, where it had to be registered.

Q. And Mr. Burke outlined about what the procedure might be?

A. I believe so.

Q. And the divergency between an association and a corporation, did he?

A. He may have.

Q. Did he say that some of these organizations were being formed as corporations?

A. He may have.

Q. Were the names of any of these independent unions mentioned at that time?

A. I don't remember.

1533 Q. Now, did you know at that time Mr. Harold Falk had suggested the name of Mr. Burke as an attorney?

A. Oh, yes.

Q. Was anything said about who suggested Mr. Burke at that time?

A. I couldn't say. I don't remember.

Q. You don't remember whether anything was said about that.

A. At that meeting, you mean?

Q. Now, with reference to the meeting of the 12th, at the plant, April 20th, under the hospital, what names of lawyers did you suggest at that meeting?

A. I merely suggested that there were plenty of good labor lawyers, like Mr. Padway and Mr. Quick.

Q. Who did you have in mind?

A. I didn't say.

Q. Didn't you have anybody in mind except Mr. Padway and Mr. Quick?

A. I may have, but I didn't mention their names.

Q. You don't remember who you might have had in mind?

A. I don't.

Q. Did you hear the name of Clinton McCarthy mentioned?

A. I don't remember. It may have been mentioned.

Q. Do you know who Mr. McCarthy is?

A. I do not.

Q. You knew he has been employed by members of 1534 your plant out there, did you?

A. I never heard the name before.

Q. You didn't know anything about it?

A. I don't know a thing about it.

Q. Did you know at that time that there had been a meeting of employees at the Falk plant for the purpose of forming an independent union?

A. No, I didn't know there had been any then yet.

Q. The only action taken by any employees, as far as a union other than the American Federation of Labor and the C. I. O., is this incident you are talking about?

A. Coming to Mr. Burke's office.

Q. Did you know of the draftsman and engineers having a meeting for the purpose of forming an organization?

A. They may have had it. I didn't know about it.

Q. You didn't know about it?

A. I didn't.

Q. Now, at the time this committee was appointed to see Mr. Falk concerning the name of the lawyer, did you object to that?

A. I don't believe at the moment I did. I wasn't the chairman that done the appointing.

Q. Did you ever object to it?

A. Oh, yes.

Q. When?

1535 A. When they came back.

Q. What did you say?

A. I believe I have related it about four times now, that during the discussion, somebody else started the discussion as to what they would say if asked who recommended or suggested the lawyer, and I said if anybody asked me, I would say Harold Falk, because there is so many knows about it, and it is no use, it is going to get out anyhow.

Q. If you thought it wouldn't get out, it was all right for you not to mention who suggested it, is that it?

Mr. Rissman: I object to that. He stated his objection to it. It is entirely immaterial what he thought about it. He is reciting the fact as to the recommendation of the atorney, and the statement and conversations he had with the other men.

Trial Examiner Batten: He may answer the question.

The Witness: You will have to give it to me again.

(The question was read.)

A. No, sir. That was a suggestion or discussion between the other members who were trying to dig up a story. I didn't try to make any story to give. I had intended—

Q. (By Mr. Clark.) Well, you made—well, excuse me. Had you finished?

A. I intended to tell the truth, and I so told them.

Q. Your reason for saying it was because there were

1536 too many, and it would get out anyway?

Mr. Rissman: I object.

A. The reason I said it?

Q. (By Mr. Clark.) That is the reason you did, didn't you?

A. Sir?

Q. Isn't that the reason you gave, "There are too many here, and it will get out anyway, and so we might as well tell them"?

A. That is why I objected?

Q. Isn't it?

A. Absolutely not.

Q. Why did you object to it?

A. Because of the fact that Mr. Harold Falk had suggested the attorney, and the fact that they were attempting to cloak that statement, that fact.

Q. What was done about cloaking that fact?

A. Nothing. There was one or two—there might have been some others in accord with me. My little voice was lost in the shuffle, there were too many.

Q. Had you finished?

A. Practically.

Q. You were the only one of the ten, then, that opposed the idea of telling who suggested the attorney?

A. I wasn't opposed to telling who suggested the attorney. I was entirely in favor of telling who suggested the at-
1537 torney.

Q. You were the only one of the ten who voiced any objection to hiding who suggested the attorney?

Mr. Rissman: I object to that.

Q. (By Mr. Clark.) Is that right?

Mr. Rissman: There is no testimony as to whether he was the only one who had admitted it.

Mr. Clark: That is what I am asking him.

Trial Examiner Batten: He just asked him if he was the only one.

Mr. Rissman: He is telling him. He is not asking him.

Q. (By Mr. Clark.) Well, were you?

Q. (By Trial Examiner Batten.) Were you the only one who objected to devising some story?

A. That I don't remember. I believe so. I don't believe anybody else spoke about it.

Q. (By Mr. Clark.) Do you know whether any of the ten men who went to the office of Alexander, Burke & Clark were then members of the C. I. O.?

A. I don't know.

Q. As I understand it, Mr. J. Wolf, Mr. William Kreger, Mr. Jones and yourself are now members of the C. I. O.?

A. I believe that is correct, as far as I know.

Q. Do you know when they went into the C. I. O.?

A. I don't.

1538 Q. After this meeting at the office of Alexander, Burke & Clark, you never went back to that office, did you?

A. I didn't.

Q. What was decided at that meeting that you were at, as to the formation of an organization?

A. I don't remember all the details. I believe it was decided to run along as an association, as far as I recollect.

Q. And you left with that impression?

A. Yes.

Q. Now, when did you see notices posted as to a meeting after that?

A. I don't know when I seen them. I did see notices, I believe.

Q. And that notice was directed to all of the employees of the Falk plant, wasn't it?

A. Excepting management, and foremen, and such-like.

Q. And a meeting was held that Sunday afternoon, the following Sunday, on the 18th of April?

A. I believe that is the date.

Q. That is the meeting at the North Avenue Auditorium?

A. I think so.

Q. You were there?

A. Yes.

Q. You were up on the stage?

A. Yes.

1539 Q. Were the rest of these ten men up on the stage, too?

A. I couldn't say. I don't remember who was all there.

Q. About how many men were on the stage?

A. I wouldn't attempt to guess. I don't remember. I didn't count them. It has not impressed me, just which ones were there. I do know that I seen Mr. Greget, and I believe Mr. Trost, and I believe Mr. Kirsch remain in my mind as being up there.

Q. Having in mind that that was the 18th when you went to that meeting, were you a member of the C. I. O.?

A. I had signed an application, yes.

Q. When?

A. I don't remember. To be frank, I believe it was on Friday. I wouldn't swear whether it was Friday. I think it was Friday. That is the closest I could say.

Q. Did you agree not to belong to any other organization in that application?

A. I didn't.

Q. What is the form of that application?

A. Merely making an application for membership in the Amalgamated Association of Iron, Steel and Tin Workers.

Q. Did you pay any money?

A. I did not.

Q. Was it your understanding that you could join as many of these labor organizations as you wished?

1540 A. No.

Q. Now, when you went to the meeting on the 18th, you had no idea of joining another organization?

A. I had made application, I could be rejected.

Q. What was your thought? Did you feel that you were then a member of the C. I. O., that you were not interested in joining any other?

A. That was for them to decide, not me.

Q. No. What did you think?

A. I naturally wished they would accept me as a member.

Q. Then why did you go to the meeting of the 18th?

Mr. Rissman: I object. There is nothing inconsistent with his going to the meeting of the Independent Union after merely signing an application for the C. I. O.

Mr. Clark: If there is nothing inconsistent, I see no reason why he couldn't say so.

Mr. Rissman: He has given his reason for being there.

Trial Examiner Batten: He may answer why he went.

A. I don't know who told me to go, or asked me to go. They said there was a meeting, we should all be there. Somebody said it to me, practically requested me to be there, or asked me to be there.

Q. (By Mr. Clark.) What did you think the purpose of that meeting was?

A. I knew what it was.

1541 Q. What?

A. To recruit members for the Independent Union.

Q. There wasn't any Independent Union, as far as you knew, at that time?

A. Mr. Greget said there was.

Q. As far as you knew?

A. No, I am not an authority on it.

Q. The last you knew was the meeting at Alexander, Burke & Clark's office, when they agreed to go along as an association?

A. Sure.

Q. You didn't hear anything about it until someone told you of this meeting to be held on the 18th?

A. Certainly, I knew about. I was given application blanks, and at that time it was common news. I don't know who told me on Friday. I believe it was that there would

be a meeting Sunday, and that they would sign up new members and talk it over. Of course I knew it.

Q. Was it your understanding that this meeting of the 18th was a meeting of the Independent Union?

A. I believe all employees were invited.

Q. And it wasn't limited to members?

A. Not that I recall.

Q. At this meeting, someone asked who had suggested the attorney?

1542 A. That is correct.

Q. Who asked that question?

A. I couldn't tell you.

Q. Did you tell the man to ask that question?

A. I did not.

Q. When the question was asked, did you make any effort to tell who had suggested the attorney?

A. I didn't get a chance.

Q. Everything was in confusion?

A. Mr. Greget pretty near broke his legs to get up there and explain it.

Q. Everything was kind of confused, though?

A. No, I wouldn't say it was.

Mr. Rissman: I object. He has not testified so.

Q. (By Mr. Clark) Why do you say you didn't get a chance to answer?

A. Mr. Greget bounced off that chair like he was sitting on a tack. He knew the statement was directed to him.

Q. Why do you say that?

A. Because it was at his suggestion that they went to Mr. Harold Falk.

Q. Now, Mr. Landry, someone from the floor asked, "Who suggested the attorney for this", didn't they?

A. Correct. They also—

Q. Now, just a minute.

1543 Mr. Rissman: Let him finish the answer.

Mr. Clark: He answered.

Q. (By Mr. Clark) Who was presiding at that time?

Mr. Rissman: I object to not letting the witness finish his statement.

Trial Examiner Batten: Just a minute. Go ahead, Mr. Clark.

Q. (By Mr. Clark) Who was presiding at the meeting at that time?

A. I believe, while all the officers were absent, or those

that were supposed to be starting this independent union, that the multitude had some kind of an election, and elected Mr. Norman Bryce temporary chairman, while all of us who were supposed to be running it, were downstairs waiting for Mr. Greget.

Q. Weren't you there when the question was asked?

A. You bet I was.

Q. Who was presiding when the question was asked?

A. I don't remember; most likely it was Mr. Bryce.

Q. It wasn't Mr. Greget, was it?

A. I couldn't say. I just say "most likely".

Q. After Mr. Greget made his statement, did you offer any statement?

A. Not from the platform, no.

Q. You left at that time, didn't you?

1544 A. I didn't.

Q. When was it you left the stage at that meeting?

A. I believe it was about three-thirty, when the majority left.

Q. Why didn't you make the explanation that Mr. Falk suggested the attorney?

A. Mr. Greget answered it once.

Q. And that satisfied you?

A. It didn't satisfy me, no.

Q. Well, why didn't you then give your explanation?

A. Because I felt I was amongst a bunch of men whose ideas were alien to mine, and I intended to convey my ideas personally.

Q. You felt you were intruding at that meeting, did you?

A. I felt that we differed very much.

Q. You had already applied for membership in the C. I. O.?

A. That is correct.

Q. And no matter what this organization did, or how many did it, you were not going to be a party to it?

A. Not necessarily.

Mr. Rissman: I object to that. He can answer what he favored and what he opposed at this organization meeting, but there is not going to be any blanket statement about it.

Trial Examiner Batten: I think he can answer. I think he is perfectly able to take care of himself.

1545 The Witness: Thank you.

Mr. Rissman: I grant that. That is not why I object. I object because of the form of the question pending

on the record. The witness certainly can take care of himself.

Trial Examiner Batten: What is the question?

(The question and answer were read.)

Trial Examiner Batten: I think that is a perfectly proper question. He may answer.

A. The answer is there.

Trial Examiner Batten: Well, it may stand.

Q. (By Mr. Clark) Now, Mr. Landry, on direct examination you were asked why you went to that meeting and you said you felt you were one of their members and fellows, and had a right to be there.

Mr. Rissman: Just a minute. That is a misstatement of the testimony, if the Examiner please.

Mr. Clark: That is the note I have.

Mr. Rissman: The notes may be in error.

Trial Examiner Batten: Do you have a note of it, Mr. Rissman?

Mr. Rissman: I have not, but I know that is not the statement.

Q. (By Trial Examiner Batten) Do you recall what you said?

A. I don't recall what I said.

Mr. Rissman: You may ask him his reasons again, 1546 but I object to leading or telling him what he testified.

Trial Examiner Batten: What was the question?

Mr. Clark: I will ask the question.

Q. (By Mr. Clark) Why were you at the meeting of April the 18th?

A. Common interest of the men.

Q. You had the interests of the employees of the Falk company at heart?

A. Always.

Q. And although you had applied for membership in the C. I. O., and your impression was this was a meeting to form a rival organization, you felt free to go to it, is that right?

A. I was invited to it.

Q. Did you tell anybody that invited you that you had applied for membership in the C. I. O.?

A. I didn't ask anybody to invite me. They invited me.

Q. As you understand it now, this was a general meeting of all employees of the Falk Company?

A. Regardless, yes.

Q. It wasn't limited to members, or those who had signed

applications for membership in the independent organization?

A. No.

Q. There was a meeting of the C. I. O. on April 18th, too, wasn't there?

1547 A. I believe so.

Q. And you went directly from the meeting of the Falk Company at the North Avenue Auditorium, to the C. I. O. meeting?

A. As fast as I could go.

Q. And told them everything you had heard?

A. I didn't.

Mr. Rissman: I object to that. He has not testified he told them anything.

Q. (By Mr. Clark) Well, did you?

A. I did not.

Q. What did you say?

A. As a matter of fact, I was busy defending myself there for quite a while. A great big bruiser collared me by the bar and he said, "You are an Independent guy", and he was going to take a poke at me.

Q. He was a member of the C. I. O., was he?

A. I don't know what he was. He was a member of the Falk Company, that I know. I later found out he did belong to the C. I. O.

Q. Who was it?

A. I don't recall who it was. I just remember him being quite a good sized man, much bigger than I was.

Q. He was going to take a poke at you because you were a member of the Independent Union?

A. He thought I was a spy and he frankly said

1548 "Why are you here?"

Q. Why were you there?

Mr. Rissman: Where? At the C. I. O., or the Independent meeting?

Mr. Clark: At the Independent meeting.

Mr. Rissman: I think he has stated that three times, if the Examiner please.

A. I was there more or less by request. I will state it. There was no distinction made when I was asked, if I was C. I. O. I couldn't come, or anything else. I was informed there was a meeting, and asked to be there, and I was.

Q. (By Mr. Clark) Why did you hurry over to the meeting of the C. I. O.?

A. There wasn't much time between the end of one, and the start of the other.

Q. Was it important that you get to the C. I. O. meeting?

A. To me it was.

Q. Why?

A. I wanted to see the difference between them.

Q. Isn't it a fact that you wanted to tell them what you had heard at the other meeting?

Mr. Rissman: I object to that question.

Trial Examiner Batten: Let him answer.

Mr. Rissman: He said he didn't tell them anything and I object to the inference of this examination.

1549 Trial Examiner Batten: There is no inference there as far as the Examiner is concerned, none whatever.

Mr. Rissman: It is an improper question, Mr. Examiner.

Q. (By Trial Examiner Batten.) Do you remember the question?

A. He wanted to know if I hurried over there to tell them what happened.

Q. Yes. Well, did you?

A. No.

Q. When you got there, did you tell them anything?

A. No, I didn't. As I say, I was busy defending myself there for some time.

Q. (By Mr. Clark.) When this big bruiser you talk about threatened to take a poke at you, what was your explanation as to why you were at the Independent meeting?

A. I said, "You don't know me, or you wouldn't be wanting to take a poke at me."

Q. Did you tell him, "I am a member of your C. I. O."?

A. I don't think I did. I said, "We can always find out most of these things, and then decide, and if you knew me as the other boys do, you would know I am always working for the interests of the majority."

Q. And then you proceeded to tell him what happened at the other meeting?

Mr. Rissman: I object.

Trial Examiner Batten: Now, Mr. Clark, I don't see 1550 any need of referring to that any more. The witness has said two or three times he didn't say anything. There is no use, for the purpose of the record, of building that thing up.

Mr. Clark: It is not my understanding that he stated two

or three times, or even once, that he didn't tell this man, who he calls a big bruiser—

Trial Examiner Batten: You didn't say "this man" in the last question.

Mr. Clark: Yes.

Trial Examiner Batten: Will you read the question?

(The question was read.)

Trial Examiner Batten: You will pardon me. I thought you said "proceeded to tell them."

Mr. Rissman: That was my impression, too.

The Witness: Am I supposed to answer that?

Trial Examiner Batten: Yes, you may answer it.

A. I believe I said two or three times I was busy defending myself. I was more concerned with not getting a punch in the snoot than I was in what I said.

Q. (By Mr. Clark.) What did you say in your defense?

A. That he didn't know me; that I was merely trying to find out which union was going to do us the most good, which would be the most beneficial for us, and which the men most preferred.

Q. And that you were at the other meeting only to 1551 find out what they were doing?

A. Naturally I went there to find out what they were doing.

Q. Why didn't you say so?

A. What do you think I went there for? A happy afternoon?

Mr. Rissman: Just answer the question, Mr. Landry.

Mr. Clark: I want to know what you went there for.

Q. (By Mr. Clark.) Now, Mr. Landry, why did you join the C. I. O.?

A. How many times did I answer that already?

Trial Examiner Batten: Even though you have, Mr. Landry, the question is, why did you join the C. I. O.?

A. Well, I feel I have stated the reason three or four times.

Trial Examiner Batten: Well, state them again. That is all right.

A. Through my experience with the way I believed the independent union would be started out, I thought the company had something in there, and also through the fact that 90 or 98 per cent or something like that of the shift that I worked with had already joined the C. I. O. and that I am always in favor of whatever the majority of the boys want.

Q. (By Mr. Clark.) That is, no matter what organization the 98 per cent belonged to, you were willing to go with that organization?

A. I believe.

1552 Q. If 98 per cent had applied in the Independent, you would have accepted that?

A. I think so.

Q. So that the advantages that you talk about of the C. I. O. over the Independent don't make any difference to you?

A. I didn't say that.

Q. Well, I would like to know.

A. That is very likely the reason that the majority prefer the C. I. O., for the advantages of it over the Independent Union.

Q. Well now, Mr. Landry, was it the fact you thought the C. I. O. was a better organization for your purpose, or the fact that 98 per cent of your shift had applied for membership in the C. I. O. that controlled your joining?

Mr. Rissman: I object to the question, if the Examiner please, and to this entire line of questioning. Mr. Landry's personal actions in this case are not on trial. We are here to determine several matters: First, if the company engaged in unfair labor practices, and among those things is the method of formation and administration of the Independent Union. I do not believe that Mr. Landry's personal reasons for joining one union, and not joining another, are going to be helpful in any way in determining whether or not the company has engaged in unfair labor practices, and I believe that any examination on any point other than the method of

1553 organization of the Independent Union, and the evidence that Mr. Landry has given us as to why he believes it was company-dominated, or that the company had something to do with it, are improper.

Trial Examiner Batten: Well, I question very much as to how material they are. However, there has been a great deal of latitude so far in this hearing, Mr. Rissman, and I have no—

Mr. Clark: I feel this:—

Trial Examiner Batten: Just a minute, Mr. Clark, until I get through.

Mr. Clark: Excuse me.

Trial Examiner Batten: (Continuing.) —and I have no idea that we should begin now to closely draw the line. I think Mr. Clark may proceed with his cross-examination. As I say,

I question very much as to whether or not these questions are material to the issues in this case.

Mr. Rissman: Except, if the Examiner please, if they are not material to the issues in the case, and the Examiner feels that way, we should not take the time to go into those matters.

Trial Examiner Batten: I just said, Mr. Rissman, that so far in this hearing certainly there has been unlimited latitude for the presentation of evidence, and I do not propose at this time to begin to draw a fine line of distinc-
1554 tion, and so I will permit him to answer the question, and whatever materiality it has, it will be in the record to be given consideration.

The Witness: Please repeat the question.

(The question was read.)

Mr. Rissman: I object to that question, because he had not indicated that either one of those things controlled the joining.

Mr. Clark: I submit he has answered in his direct examination one reason was that he thought it was a better organization, and another was that 98 per cent of his shift had joined, therefore, he was always with the gang, "I always went with the boys, I will stick with them."

Trial Examiner Batten: I don't think there is any question about Mr. Landry's testimony, and I don't see any inconsistency in it in this respect thus far, none whatever. If you will read the question to Mr. Landry, you can answer it, Mr. Landry.

(The question was read.)

A. That never controlled my joining. I formed my own opinion that I thought it was better, and the fact that 98 per cent wanted it, and the fact that the Independent Union had a strong odor in my opinion. That is why I joined it.

Q. (By Mr. Clark.) Do you remember Mr. Burke being at the meeting of April 18th?

1555 A. I believe he was called.

Q. The meeting was in progress, and someone sent for him?

A. I think that is correct.

Q. Can you tell us what, if anything, he said after he got there?

A. It was something important at the time. I believe that the question was asked, if it was already an independent union, or if it was to get members, or if they were going to start it, and I see that Mr. Greget, in mistake said, or at least

he thought it was already, I believe he did say "The Independent Union is," and that we were members, but I think Mr. Burke cleared it up when he came there, I think Mr. Burke cleared it up and said there were some things, it had to be registered, or something like that.

Q. Mr. Burke said there wasn't any organization?

A. I believe he did.

Q. That was your impression?

A. That was my impression.

Q. Did you stay for all of that meeting on the 18th?

A. I couldn't say. The gang marched out.

Q. Had the meeting adjourned, as far as you know?

A. I don't know as it was adjourned.

Q. You don't know of any definite aetion that was taken at that meeting?

A. I don't believe there was.

1556 Q. There seemed to be a lot of hub-bub, as someone described it, everyone talking at once?

A. Just at the end; I wouldn't say so much that Mr. Greget couldn't give the proper answer when he was asked. They listened pretty good.

Q. I didn't have that in mind, Mr. Landry.

A. I answer you, though.

Q. I know you thought I had that in mind, but I didn't. The meeting adjourned without taking any definite action, anyway?

A. I believe I would say so.

Mr. Clark: That is all.

Trial Examiner Batten: Mr. Goldberg, have you any questions?

Mr. Goldberg: I have no questions.

Redirect Examination.

Q. (By Mr. Rissman.) Mr. Landry, Mr. Lamfrom has questioned you rather exhaustively on the number of conferences you had with me about this case, do you recall?

A. I believe he did.

Q. Were there other people present at those meetings?

A. Yes.

Q. The other officers and members of your union, some of them?

A. Yes.

1557 Trial Examiner Batten: Mr. Rissman, I don't think it is necessary to question on that, because, after all, I

think any lawyer that does not interview his clients before he tries a lawsuit had better go back to school, or some place.

Mr. Rissman: I would be ashamed to stand here if the witness said he had not been interviewed.

Q. (By Mr. Rissman.) Who were the foremen and assistant superintendents you testified you saw at the North Avenue meeting, Mr. Landry?

A. If I recollect correctly, I believe Mr. Carl Stenn was there, and I believe a man that I know was Pat Feely, and another one as Mr. McAndrew were there; and I recall him because of the fact I didn't know him personally, but, while walking out amongst the men, he started telling me I should get up there and conduct the meeting, and that I knew more about it than whoever it was, and he said, "I should say nothing. You know, I am a boss, I have charge of about ten men over there."

Q. In connection with this business of who recommended the attorney, let me ask you, Mr. Landry, at that North Avenue meeting, or shortly after you knew that Mr. Falk had suggested Mr. Burke as an attorney, did you think it proper for the company to suggest an attorney, and for that fact to be concealed from the employees?

A. I did not.

1558 Mr. Clark: I submit that is immaterial.

Trial Examiner Batten: Of course, I don't know, but I think Mr. Landry has been asked a lot of questions about his personal opinion. You answer the question.

A. I didn't think it was right, no.

Q. (By Mr. Rissman.) You have testified in response to Mr. Lamfrom's question that during the existence of the Works Council, there was no labor trouble, or no labor disturbance in the plant, is that right? Wasn't that your testimony?

A. I believe I did, yes.

Q. Was there ever any labor trouble or labor disturbance at the plant before the Works Council, all the time that you were employed there?

A. While I was employed?

Q. While you were employed.

A. Well, now, I don't know if that was before. I believe it was the same time, they both went together, I believe, that the Federation of Labor made their drive there for membership.

Q. Was there any disturbance, or any interruption of work

at the plant during all the time you were employed there before the Works Council was organized?

A. I don't remember.

Q. Was there ever any strike or disturbance?

A. Not while I was employed there.

1559 Q. So that the fact as to whether or not there was any labor trouble or labor disturbance before the Works Council was the same as it was during the existence of the Works Council?

A. I think so.

Q. You have mentioned here that one of the chairmen of the North Avenue meeting, a man who acted as chairman for a while, was Mr. Bryce?

A. Norman Bryce.

Q. Who is he?

A. I always regarded him as being a management official, although that has been denied. I don't personally know his position with regard to the company.

Q. Do you know whether other employees in the plant regard Mr. Bryce as being a management official?

A. Well, there was so much doubt about it, that I naturally say that those who were in doubt didn't know whether he was or not.

Q. Did you ever discuss with any other employee the question as to whether Mr. Bryce was a management official?

A. Yes, I have.

Q. You have testified that you had something to do with application cards of the Independent Union.

A. Yes.

Q. I hand you herewith Board's Exhibit 32 for iden-

1560 tification, and ask you if that is one of the application cards of the Independent Union.

A. Yes, sir.

Mr. Rissman: I offer BOARD'S EXHIBIT NO. 32 in evidence.

Mr. Engelhard: May I see it?

Mr. Rissman: Yes.

Trial Examiner Batten: If there is no objection, it will be received.

Mr. Engelhard: The only point I wish to make is, on the face of that, it does not appear to be an application blank of any named organization but an organization to be formed in the future.

Trial Examiner Batten: Do you object to it on that ground?

Mr. Engelhard: No, I do not object to it. I merely state the record might so show.

Trial Examiner Batten: Well, I presume the exhibit will show. It will be a part of the record, Mr. Engelhard.

Mr. Engelhard: In connection with the exhibit, I make that statement for the record.

Trial Examiner Batten: I presume this is the application card referred to, that was used prior to the time the Independent Association was actually organized.

Q. (By Trial Examiner Batten.) Is that right, Mr. Landry?

1561 A. Yes, sir.

Q. And this is the kind of an application card which you were requested to take out into the plant and have signed?

A. That is correct.

Mr. Rissman: That is all.

(Whereupon, the document above referred to, marked BOARD'S EXHIBIT NO. 32, was received in evidence.)

Recross Examination.

Q. (By Mr. Engelhard.) You felt perfectly free to join the C. I. O.?

Mr. Rissman: May I have that question read?

(The question was read.)

A. Surely.

Q. (By Mr. Engelhard.) You have never been influenced by any action taken by any officer of the company about joining or not joining the union?

A. It didn't influence me. I had quite a few talks with them.

Q. I am just asking you whether you were influenced.

A. It wouldn't influence me, no.

Q. One way or the other?

A. No, sir.

Q. You are a man of your own mind?

A. I try to be.

1562 Q. You were not intimidated by anybody about joining any union, or refraining from joining any union?

A. Intimidated? Well, naturally, if it didn't scare me what they said, I wasn't intimidated, no.

Q. Then you were not intimidated, and you don't claim you were ever coerced in doing anything, or refraining from doing anything?

A. They may have attempted it. It didn't work.

Q. Whatever was done by anybody belonging to the management of the corporation had no influence upon you whatsoever?

A. No, it didn't have much.

Q. What is that?

A. It didn't have much influence.

Q. Did it have any influence upon you?

A. Yes. The influence or thought remained in the back of my mind that, regardless if I am outspoken, and do what I want, and that they guarantee it has no bearing on what union I joined, that I may take a drink out of the wrong bubbler some day.

Q. The point is, you have exercised your freedom of choice?

A. I have.

Q. You have openly proclaimed it.

A. I have, yes.

Q. You have never made any attempt to conceal the fact you were a member of any union?

1563 A. It would be useless.

Q. That is the point I am getting at.

Mr. Rissman: What point?

Mr. Engelhard: You say what point, Mr. Rissman?

Mr. Rissman: Yes, sir.

Q. (By Mr. Engelhard.) Namely, that you have exercised your freedom of choice?

A. I certainly have tried to.

Trial Examiner Batten: Is that all, Mr. Engelhard?

Mr. Engelhard: That is all.

Redirect Examination.

Q. (By Mr. Rissman.) Did you have any specific event in mind when you said you might take a drink out of the wrong bubbler some day?

A. Absolutely.

Q. What?

A. It is common knowledge in the shop—

Q. Just tell us what you had in mind.

A. The fact because I belonged to the C. I. O., and was one of its officers, and spoke freely my own thoughts and opinions about management and officials and such, and they freely expressed their disregard or indifference to my opin-

ion, that regardless of how often they told me it didn't make any difference what button I wore, that if I slipped here or there, they are watching me, I would be looking for
1564 another job.

Mr. Engelhard: Just a minute.

Q. (By Mr. Engelhard.) Did you say you know of any fact that warrants that answer?

A. I don't think I said that.

Trial Examiner Batten: Just a minute, Mr. Engelhard, until he finishes. You may have your turn again, and then I presume, if any of the other attorneys desire a turn, they may take their turn.

Will you proceed, Mr. Rissman.

Q. (By Mr. Rissman.) What events at the factory that you knew of or had heard about led you to say now that if you took a drink out of the wrong bubbler, it might be too bad for you?

A. That is the way we usually refer to it in the shop, but I could point it out as being the case when Mr. Oristo went to the powerhouse, when he should have drunk right next to his machine, something like that.

Mr. Rissman: That is all.

Recross Examination.

Q. (By Mr. Engelhard.) That is Mr. Oristo's claim, is it not, Mr. Landry?

A. I was made aware of the fact at that time.

Q. I see, you were made aware of the fact through somebody who claimed to be aware of the fact?

1565 A. It is common talk around the shop, to drink out of the wrong bubbler, that is a common expression.

Q. When I interrupted Mr. Rissman, which I should not have done, I asked you whether or not you are aware of any fact, I mean, of any fact directed against you, since you have become a member of the C. I. O., that your job is any less secure today than it was at any time you worked in the plant?

A. Any fact, did you say?

Q. Yes, do you know of any fact, anything, any matter, any event directed toward you by anybody connected with the management?

A. Oh.

Q. That in any way indicates that your job is less secure

today than it was at any other time since you were working there?

A. You didn't have the words "connected with the management" in there the first time you stated it.

Q. That is what I am asking you.

A. I couldn't say that any of them—I don't believe any of them did openly.

Q. I am asking you whether you know of any fact, thing or matter on the part of anybody belonging to the management, that makes you feel less secure about your job today than at any other time since you worked there?

A. The fact that Mr. Harold Falk told me recently
1566 that if the C. I. O. pulls a strike in our shop, and keeps it shut for one week, he will lock the door and throw the key away, I guess my job isn't secure any more there, it is gone with the rest, isn't it?

Q. That isn't anything directed against you personally, is it?

A. That influenced me.

Q. I am asking you about anything that makes you, as an individual, feel less secure, by reason of any act or anything that has been told you, outside of that remark?

A. More so—no. I will answer your question no.

Q. That is what I wanted you to answer.

A. You have got it.

Mr. Engelhard: If you so felt like it. That is all.

Trial Examiner Batten: Mr. Goldberg?

Mr. Goldberg: I have nothing.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: Nothing.

The Witness: Am I through?

Trial Examiner Batten: Apparently that is all.

The Witness: Thank the Lord.

(Witness excused.)

Trial Examiner Batten: I believe we will recess for a few minutes.

(A short recess was taken.)

1567 Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

Mr. Rissman: If the Examiner pleases, I am calling Mr. Kingsland at this time. It breaks the continuity of it, but he has to get away, and I thought we would get his testimony at this time.

1568 PHIL J. KINGSLAND, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name, please?
A. Phil J. Kingsland.
Q. (By Trial Examiner Batten.) How do you spell the last name, Mr. Kingsland?
A. K-i-n-g-s-l-a-n-d.
Q. (By Mr. Rissman.) And where do you reside, Mr. Kingsland?
A. 529 North Thirteenth Street, Apartment 310.
Q. Milwaukee, Wisconsin?
A. Milwaukee, Wisconsin.
Q. What is your business or occupation?
A. Business representative of the Operating Engineers, No. 311.
Q. That is the local union that has intervened in this case?
A. It is.
Q. What is the jurisdiction of your union, as far as men are concerned?
A. The operation of all steam or motor-power plants in the generation of power, also refrigeration and air-con-
1569 ditioning.
Q. Are there employees employed by The Falk Corporation who are eligible for membership in your union?
A. There is.
Q. Do you know how many employees there are?
A. I was informed that there were seventeen in all.
Q. By whom were you informed?
A. By the men themselves.
Q. These are men who are generally classified as power house employees?
A. Yes.
Q. Among your duties as a representative of the International Union of Operating Engineers is the organization of the unorganized?
A. It is.
Q. And do you organize any of the employees of The Falk Corporation?

A. I did.
Q. Have you solicited them for membership in your union?
A. Not directly. I had men doing it for me.
Q. Was it done under your supervision?
A. It was.
Q. Do you know, and can you tell us, how many employees of the seventeen indicated that they would join your union?
Trial Examiner Batten: Mr. Rissman, I wonder if
1570 you would mind having him place the date this first started?
Q. (By Mr. Rissman.) Will you do that, Mr. Kingsland? When did you first start an organizing campaign with the Falk employees?
A. In February, 1937.
Q. And it was in connection with that campaign that your men under you organized some of the employees?
A. Yes.
Q. How many of them did you organize?
A. Fourteen in all.
Q. And how was their intention made known to the union?
A. Several of the men came up to the office.
Q. Did these fourteen men sign application cards?
A. They did.
Q. I hand you herewith Board's Exhibit No. 33 for identification, and ask you if that is the type of application card signed by the men?
A. It is.
Mr. Rissman: I offer BOARD'S EXHIBIT NO. 33 in evidence.
Mr. Lamfrom: Let's see it, just as a matter of information. I think I have seen them.
Trial Examiner Batten: There is no objection?
Mr. Lamfrom: No objection.
Trial Examiner Batten: If there is no objection, it
1571 will be received.
(Thereupon, the document above referred to, marked BOARD'S EXHIBIT NO. 33, was received in evidence.)
Q. (By Mr. Rissman.) Do you know if any of those men who signed application cards paid any fee to the union?
A. They all did.
Q. What fee did they pay?
A. From one to five or ten dollars. They never paid the full initiation fee.

Q. That was part in payment of their initiation fee?
A. It was.
Q. After the men had signed these application cards and paid part of their fees, did you confer with any representative of The Falk Organization?
A. I did.
Q. When did you do that, approximately?
A. It was in April, approximately April 12th.
Q. 1937?
A. 1937.
Q. With whom did you confer?
A. Mr. Harold Falk.
Q. Will you relate to us the conversation had between you and Mr. Falk?
A. Yes. I did not call Mr. Falk for an appointment.
1572 Q. Was there any reason for not calling?
A. There was.
Q. What was that reason?
A. I had been informed by the men employed in the power plant that it would be useless to call for an appointment, that after he knew who I was, he would either be too busy to see me, or out of the city.
Q. Now, tell us about your appointment with him, and what conversation was had between you.
A. So I went out to see Mr. Falk, it was on a Monday, I think, about April 12th, introduced myself, told him who I was, told him that I would like to be recognized as a representative of the union, and have him to recognize the union as the bargaining agent for these men.
Q. What did he say?
A. The impression given me—
Q. Just a minute. What did he say?
A. I can't recollect the exact words.
Q. In substance?
Q. (By Trial Examiner Batten.) You can tell us in substance what he said.
A. That he saw no reason why he should not recognize us, but he wanted to confer with the men first. He asked me to submit a list of the names of the men to him, but, upon legal advice later—
1573 Q. (By Mr. Rissman.) Just tell us about the conversation, what did you say to him when he asked you for a list of the names?

A. I told him I would.

Q. Did you tell him at that time, or during that conversation, how many men had signed applications for membership in your union?

A. I did.

Q. You told him there were fourteen?

A. Fourteen out of the seventeen.

Q. Did he indicate that he doubted that statement, or did he say anything to indicate that he doubted your statement?

Mr. Lamfrom: Just a minute. I submit counsel may ask the witness what he said, to relate the conversation, but not "did he or did he not say this?"

Q. (By Trial Examiner Batten.) You may proceed, Mr. Kingsland, just tell us what you said and what Mr. Falk said during this conference.

A. Well, he said he was willing to recognize our union as the bargaining agent for the men, but that he wanted to see and talk with the men first.

Q. (By Mr. Rissman.) Did he say anything, or question you in any manner whatsoever as to whether you did represent the fourteen men you said signed application cards?

A. No, only to the extent of wanting to see the men
1574 first, to get their word from them.

Q. And he asked you to submit a list of the men?

A. He did.

Q. Did you submit such a list?

A. No, I didn't.

Q. Did you have any reason for not submitting such a list?

A. Yes, upon advice from our attorney.

Q. Following the interview you have just related with Mr. Falk was there any meeting of the members of your union, of the Falk plant?

A. No, there was not.

Q. Was there any meeting scheduled for them?

A. There was.

Q. Were they notified of such a meeting?

A. They were.

Q. And how many attended?

A. None.

Q. Subsequent to your interview with Mr. Falk, can you tell us what occurred to indicate that some of the men had severed their connection with your union?

A. Yes.

Q. What happened?

A. I received five letters in the mail, about May 6th, from five different power plant employees at The Falk Corporation, asking that the fee they had already paid on their
1575 application be returned, that they did not want our union to represent them.

Q. I hand you herewith Board's Exhibit No. 34, for identification, and Board's Exhibit No. 35, for identification, and ask you if this isn't one of the letters you received?

A. It is.

Q. Exhibit No. 34 being the letter, and Exhibit No. 35 the envelope addressed to you?

A. It is.

Q. And this letter is addressed to your union, dated May 4, 1937, and states:

"Gentlemen:

"The undersigned employee of The Falk Corporation herewith withdraws the applications signed by him for membership in the Milwaukee Operating Engineers Local No. 311, and asks that the fee paid by him be returned.

"Very truly yours."

And that is signed by John—

A. Yunkovich.

Q. (Continuing) —Yunkovich, address 605-A South Sixty-First Street, Milwaukee.

Were the other letters different from this one, or the same?

A. Exactly the same.

Q. Were all of the letters typewritten?

1576 A. They were.

Q. And they all had the return address of the employee stamped on them?

A. All but one.

Q. All but one. Do you recall which one came without the return address?

A. I beg your pardon. All the letters had the return address. It was the envelope, all but one envelope had the return address.

Q. And do you recall whose envelope did not have a return address?

A. No, I don't.

Mr. Rissman: It so appears that the letter and envelope introduced in evidence do not compare. I will ask leave to

withdraw Board's Exhibit 34 and Board's Exhibit 35, being the letter of Yunkovich, and introduce a similar letter received from Laurence G. Frank, and the accompanying envelope, if there are no objections.

Q. (By Mr. Rissman) Is this the same as the other letter I showed to you?

A. It is.

Q. It contains the same information?

A. Exactly.

Q. Except for the signature and the address of the employee?

1577 A. Yes.

Q. This envelope indicates that it was sent by Laurence G. Frank, with his address?

A. Yes.

Q. And it is addressed to your union?

A. It is.

Q. Did you make any comparison of the stationery and the typing and envelopes of these three letters?

A. I did.

Q. What did you find?

A. I found them to be exactly the same, as far as I could see.

Mr. Engelhard: Can't we shorten this by clearing up, for the purpose of the record, how those letters came out? I understood Mr. Clark said they were sent from his office.

Trial Examiner Batten: As soon as we are through with this, we perhaps can.

Mr. Engelhard: Perhaps we can save some time. We may be able to stipulate to it.

Trial Examiner Batten: Are these the letters you referred to, Mr. Clark?

Mr. Clark: Yes. I have a copy of a letter prepared in our office, dated May 4, 1937, addressed to Milwaukee Operating Engineers, Local No. 311; American Federation of Labor, 2401 West Wisconsin Avenue, Milwaukee, Wisconsin:

1578 (Reading):

"Gentlemen:

"The undersigned employee of The Falk Corporation hereby withdraws the application signed by him for membership in the Milwaukee Operating Engineers, Local No. 311, and asks that the fee paid by him be returned.

"Very truly yours."

Trial Examiner Batten: That letter was sent out of your office?

Mr. Clark: Out of our office.

Trial Examiner Batten: To how many men, Mr. Clark?

Mr. Clark: I have a notation that this letter was sent to the above by mail:

M. P. Gaherty,
Laurence G. Frank,
Carl Herzenroeder, and
George J. Achterberg.

Mr. Rissman: You have three?

Mr. Clark: No, I have four.

Mr. Rissman: I offer Board's Exhibits 34 and 35 in evidence.

Trial Examiner Batten: If there is no objection, they will be received.

(Thereupon, the documents above referred to, marked BOARD'S EXHIBITS NOS. 34 and 35, were received in evidence.)

1579 Q. (By Mr. Rissman) Did you ever speak to any of these employees, who had signed application cards in your union, as to the reason for their withdrawal?

A. No, I did not.

Q. Was it ever reported to you why they withdrew?

A. Yes.

Q. By whom?

A. By other employees of the power plant department of Falk.

Q. What did these other employees tell you?

A That they believed that the reason these men wanted to withdraw was that Mr. Falk had talked to them, and they had become frightened.

Mr. Engelhard: I submit, your Honor, that is pure hearsay.

The Witness: Yes.

Mr. Engelhard: I don't see how we can be bound by a hearsay statement of that sort. It is objected to.

Trial Examiner Batten: Of course, the question and answer will be received. As to whether or not that is binding on the respondent is a different question.

Mr. Engelhard: Let me ask if the Trial Examiner requires us now to bring in these men to see whether they made such a statement? That is where it is difficult for us.

1580 Mr. Lamfrom: The difficulty is in determining the situation, on our part, whether we have to meet this hearsay and re-hearsay.

Trial Examiner Batten: I have just said this statement, standing alone, as it is, is in no way binding on the respondent.

Mr. Lamfrom: That ought to be sufficient.

Trial Examiner Batten: Unless this statement, in other words, is substantiated or corroborated in some other manner, which shows a relationship between it and the respondent, as I just said, the respondent, of course, cannot be bound by such testimony as this. That is obvious.

Does that answer your question?

Mr. Engelhard: That answers my question perfectly. Then I don't have to worry about bringing these men in.

Trial Examiner Batten: Well, I think my statement answered your question, by stating that such evidence as this, the respondent is not bound by. I think that is clear, isn't it?

Mr. Engelhard: That is, cannot be used against the respondent, is that what you mean?

Trial Examiner Batten: Why certainly, unless it is corroborated or substantiated in some other manner. Such evidence as this is permissible for whatever value it has, but the respondent, of course, cannot be bound by such evi-
1581 dence. That is obvious, at least it is to me.

Mr. Lamfrom: It would be clear to me, Mr. Examiner, that that statement of yours would be correct but for the provision in Section 10 (B) of the Wagner Act, in which it is stated:

"In any such proceeding", referring to the type of proceeding that we are now engaged in, "the rules of evidence prevailing in courts of law or equity shall not be controlling."

Now, suppose that a finding should be made by the Labor Board upon this evidence—I am merely offering this as supposition, to clarify the query that we have in our minds—upon this evidence, that there had been interference with the right of the men in the power house to organize or to continue to be members of the organization, and we get up before the Circuit Court of Appeals on that record, and we argue that that is not evidence which would sustain that kind of a finding because it is hearsay, and for such other sufficient reasons as would be controlling in an ordinary action or proceeding in a court of law or a court of equity. But the court says to us, "Well, we are sorry. The Wagner law"—now quoting what I say the court might say, "The Wagner law says that in any such proceeding, the rules of evidence prevailing in courts

of law are not controlling, and naturally"—I am con-
1582 tinuing with what the court might say—"Congress has the right to make rules for such procedure, or evidence," what are we to say?

Trial Examiner Batten: I think you have overlooked one other rule that the Board has, and that is, that unless the findings are supported by evidence.

Mr. Lamfrom: By evidence?

Trial Examiner Batten: Are supported by the evidence. And as I just said, if a finding were made on this statement alone, with absolutely nothing else in the record to substantiate it or corroborate it, why, Mr. Lamfrom, there isn't any question in your mind that the Circuit Court wouldn't give it a second thought, and neither would the Labor Board.

Mr. Lamfrom: I certainly would think that the Labor Board would not give it a second thought, and I certainly feel that the Circuit Court of Appeals wouldn't.

At the same time, both the Labor Board and the Circuit Court of Appeals are bound by that provision of the Wagner law.

Trial Examiner Batten: But they are also bound by the fact that the findings must be supported by evidence.

Mr. Lamfrom: By evidence?

Trial Examiner Batten: By evidence.

Mr. Lamfrom: By evidence. This is a point that I
1583 would like to clear up in my own mind. I am not making these statements for any other purpose.

Trial Examiner Batten: No, I understand.

Mr. Lamfrom: Does it mean by "evidence", evidence of the same type and character that would sustain a finding, for instance, of the Federal Trade Commission?

Trial Examiner Batten: Of course, it would be difficult for me to answer that question, because, after all, I am not the court, neither am I the Labor Board.

Mr. Lamfrom: Of course, this question is one I am just asking to bring out the point.

Trial Examiner Batten: My only reply was that evidence of this type is received for whatever value it may have; but of course, this type of evidence would not be binding upon the respondent, that is obvious, that statement.

Now, as to any further statement, it is impossible for me to make any ruling, or say what the Circuit Court may do.

Mr. Lamfrom: Oh, I know that.

Trial Examiner Batten: Or what the National Labor Board may do.

Mr. Lamfrom: Furthermore, we may never get there. This is just supposititious.

Mr. Engelhard: May I make a statement?

Trial Examiner Batten: Yes.

Mr. Engelhard: You see, just in order to protect the
1584 record, and I have had this experience—

Mr. Rissman: Is this going into the record?

Trial Examiner Batten: Are you putting all this into the record? Do you want it in the record?

Mr. Engelhard: I think this should go in, because this is the first opportunity we have had to make a record of what the reasoning is.

Now, the law says here: "And the finding of the Board as to facts, if supported by evidence, shall in like manner be conclusive." Now, that is on the court. We don't know what the court would consider legal evidence in support of findings, what it considers by "evidence", but of course, it means legal evidence.

Trial Examiner Batten: You say it means legal evidence?

Mr. Engelhard: It must be legal evidence.

Trial Examiner Batten: Of course, I am not saying what it means, because I—

Mr. Engelhard: Well, I assume that the court would never permit illegal evidence.

Trial Examiner Batten: I presume it means the kind of evidence which is permissible under the National Labor Relations Act.

Mr. Engelhard: I assume so. Now, if we were to come be-
fore the court with a record showing that we made no
1585 objections to hearsay testimony, we certainly would be bound by that record.

Trial Examiner Batten: Are you being denied the privilege of objecting to it?

Mr. Engelhard: No. That is the reason why I indicated my objection was for the record.

Trial Examiner Batten: You made your objection, and I think I overruled it, stating it would be received for a certain purpose. Now, the record is made.

What is the purpose of this discussion?

Mr. Engelhard: Merely to indicate that we are not making the objection to be obstreperous.

Mr. Rissman: That has not been claimed.

Trial Examiner Batten: I don't know as we need to continue it any further, then, because there is absolutely no

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thought in the mind of the Examiner that would be the purpose of you gentlemen making an objection.

Mr. Engelhard: I had this additional point in mind, Mr. Examiner. You made the statement that, standing alone, this evidence would not bind the respondent.

Trial Examiner Batten: That is correct.

Mr. Engelhard: You said, in effect, that unless there was something to corroborate it or substantiate it—

Trial Examiner Batten: That is correct.

Mr. Engelhard: (Continuing.) —it would not bind
1586 the respondent. Now, query: Whether, if this case does get into the Circuit Court of Appeals, the Circuit Court of Appeals, under this provision of the Wagner Act, will take this position. I don't expect you to answer that.

Trial Examiner Batten: I can't guarantee you what position the Circuit Court will take.

Mr. Engelhard: I understand that. But just bear in mind that we are now operating under this law, which has in it a provision that has no comparison, so far as I know, in American jurisprudence or statutes. It simply says here, again:

"In any such proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling,"

following the statement somewhere in the Act that if there is evidence to support the finding, it must be sustained. But it does not say—

Trial Examiner Batten: I presume it is worded in the same manner as any other law. I do not recall statutes with respect to evidence, codes or statutes, which, in detail, describe these various things. It is the result of practice, and the result of experience, and I presume that the Circuit Court of Appeals, having had that experience and training, would
be in a position to determine whether or not this evi-
1587 dence, under the conditions which the Trial Examiner has admitted it, is in any way prejudicial to the respondent.

Now, it is quite impossible for me to see how it can in any way prejudice the respondent, when I have clearly stated that it is in no way binding upon the respondent.

Mr. Engelhard: I think you have made your position perfectly clear.

Trial Examiner Batten: Unless it is substantiated or corroborated by other direct testimony. And any finding based upon this statement alone, unsupported by any other evidence,

the Trial Examiner cannot see how it can be supported on any basis.

Mr. Lamfrom: I think that is all clear, your Honor.

Mr. Rissman: If I may say, if the Examiner please, in connection with the particular question and objection here, the question is more or less moot, because Mr. Harold Falk has testified that he did speak to the men, and the Board will draw its own conclusions as to whether or not his talking to the men in any way influenced them in resigning from this union.

Mr. Lamfrom: But that is just the evil of the situation.

Mr. Engelhard: You are trying to have this man testify as to what someone else told him occurred after Mr. Falk talked to him. Now, whose oath is supporting that?

1588 Mr. Kingsland merely testifies as to what somebody told him.

Trial Examiner Batten: There is no testimony here that the matter which Mr. Kingsland is testifying to occurred either before, after or during the time that Mr. Falk talked to these men, and, as far as I can see, so far there is no relationship between the two, between the statements of Mr. Falk, and this testimony.

Whether or not that appears later in the proceedings is another thing. I think the witness may continue to testify as to what he was told with respect to this matter.

(Question and answer read by the reporter.)

Q. (By Mr. Rissman.) Did you hear Mr. Falk testify—

Mr. Engelhard: Just a minute. I am going to renew the motion that that testimony be stricken, because it is hearsay.

Trial Examiner Batten: Now, Mr. Engelhard, there is absolutely no reason or sense in renewing a motion which you have made, and I have denied.

If all you want to do is build up a record, all right; but you made your motion, and I denied it. There is no justification for renewing it.

Mr. Engelhard: I don't know whether my motion was to strike. That is why I just renewed it.

Mr. Lamfrom: This is not, at least in this jurisdic-

1589 tion, Mr. Examiner, not an uncommon proceeding, to object to the question, and if there is a ruling on that question adverse to the objector, and the question is answered, the point can be raised again by a motion to strike. That is the purpose of this.

We know your ruling will be the same, at least we pre-

sume so; but it does show that we have exhausted every effort reasonably possible to accomplish our object. It is done most respectfully.

Trial Examiner Batten: Will you read that last motion, please?

(Record read by the reporter.)

Trial Examiner Batten: What was the previous testimony?

Mr. Engelhard: I think I merely objected to his testimony.

Trial Examiner Batten: Then it is not a renewal. It is a motion.

Mr. Engelhard: No. That introductory remark is probably merely talk; but the motion is to strike.

Trial Examiner Batten: Well, I presumed you made the motion to strike when you said you would renew the motion. My remark was directed to the renewal of the motion previously made.

Mr. Lamfrom: This is in a different form.

Trial Examiner Batten: If this is a different motion, 1590 as Mr. Lamfrom says, to strike, I will deny the motion.

Q. (By Mr. Rissman.) Mr. Kingsland, did you hear Mr. Falk testify that he spoke to the employees in the power house after his interview with you?

A. I did.

Q. Can you tell us, in your experience as a representative of a labor organization, what effect you think that would have upon employees?

Mr. Lamfrom: Objected to as incompetent, irrelevant and immaterial, and distinctly calling for a speculative conclusion.

Trial Examiner Batten: I will sustain the objection.

Q. (By Mr. Rissman.) Can you tell us, Mr. Kingsland, whether or not the fact an employer speaks to his employees about their membership in a labor organization does or does not influence the employees?

Mr. Lamfrom: Objected to, for the same reasons.

Trial Examiner Batten: Same ruling.

Q. (By Mr. Rissman.) How long have you been a representative of labor organizations?

A. One year.

Q. And during that time, have you had experience with dealings with employers?

A. A great many of them.

Q. And with members or persons who sought mem- 1591 bership in your union?

A. Yes, I have.

Q. Can you tell us how many employers there are in this vicinity with whom you have labor agreements?

Mr. Lamfrom: That is objected to as being incompetent, irrelevant and immaterial. I don't think we are concerned with that here.

Trial Examiner Batten: I presume you are asking these questions for the purpose of qualification as an expert?

Mr. Rissman: I am.

Mr. Lamfrom: An expert on what? Human emotions?

Trial Examiner Batten: An expert on labor matters?

Mr. Rissman: Yes, sir.

Trial Examiner Batten: You may proceed.

Q. (By Mr. Rissman.) Do you recall the last question?

A. I do.

Q. Will you answer it?

A. I would say between 225 to 250 employers.

Q. And you have daily transactions with various employers regarding labor matters?

A. I do.

Q. What was the most recent labor matter in which you were engaged prior to coming to this hearing? Tell us when. I am not interested in parties.

A. Yesterday.

1592 Q. I ask you, Mr. Kingsland, as a result of your experience in these various labor matters, whether you have any opinion as to whether or not the fact that an employer talks to his employees about a labor union would create any impression or influence upon those employees?

Mr. Lamfrom: That is objected to,—

The Witness: I have.

Mr. Lamfrom: (Continuing.) —as incompetent, irrelevant and immaterial; and for the further reason that in the form of a hypothetical question, it does not assume certain facts which are in accordance with the evidence.

Trial Examiner Batten: He may answer the question "yes" or "no."

The Witness: Yes.

Trial Examiner Batten: Whether he has an opinion.

Mr. Lamfrom: I guess that's all right.

Q. (By Mr. Rissman.) Have you any opinion as to whether or not the fact, as Mr. Falk testified here, that he spoke to these employees in the power house, had any impression or influence upon those employees?

Mr. Lamfrom: That is objected to.

The Witness: I have.

Mr. Lamfrom: Just a minute. That is along the same line.

Trial Examiner Batten: The question calls for an
1593 answer of "yes" or "no," whether he has an opinion.

Mr. Lamfrom: Yes.

Mr. Rissman: On these facts.

Mr. Lamfrom: He answered it "yes."

Q. (By Mr. Rissman.) What is that opinion?

Mr. Lamfrom: That is objected to as incompetent, irrelevant and immaterial; and for the further reason that it is a hypothetical question not containing all the facts upon which the hypothesis is based.

Mr. Rissman: The facts are part of the record.

Trial Examiner Batten: As I understand the question, the question is, whether or not as a result of these men's withdrawal from the union, whether or not he has an opinion as to whether or not this talk had any influence on them.

Mr. Rissman: That's right, whether or not the fact that Mr. Falk spoke to them had any influence upon the employees.

Trial Examiner Batten: Of course, I think the way the evidence stands at the present time, there is no showing here that he has ever had any conversation with any of these men who withdrew their applications.

Mr. Rissman: I am asking for his opinion, based upon the facts as brought out here, and I will add to the question:

Q. (By Mr. Rissman.) In addition to Mr. Falk's
1594 statement, the letter sent out by the company, which has been received as an exhibit here, addressed to the power house employees.

Mr. Lamfrom: Just a minute. The letter sent out by whom?

Mr. Rissman: By the company.

Mr. Lamfrom: The company didn't send those letters out. What are you misquoting the thing for?

Trial Examiner Batten: You mean what?

Mr. Rissman: I mean the letter where Mr. Falk says, No. 1, "I do not favor labor unions."

Trial Examiner Batten: You are referring to what exhibit? What is that?

Mr. Lamfrom: Board's Exhibit No. 18, addressed to the employees in the power house.

Trial Examiner Batten: I think, Mr. Kingsland, you may answer that question, based on the fact of that letter, and the withdrawal of these men from the organization, and the facts as they have been stated here, you may express an opinion as to whether or not that would influence the men.

Mr. Lamfrom: I do not object to that last question, but I want to have it understood that we object to the question as amended by counsel, for the same reasons we objected to the question before.

Trial Examiner Batten: You mean, since this exhibit has been introduced?

1595 Mr. Lamfrom: And the additional facts that he gave the witness in this last question. You see, he framed a question, then he added some facts to it. To the first question, we objected. We are now objecting to the second question for the same reasons.

Trial Examiner Batten: Let me phrase the question, will you, Mr. Rissman, please, on this matter?

Mr. Rissman: Sure.

Q. (By Trial Examiner Batten.) Mr. Kingsland, as I understand, there are facts here to show that on April 16th, Board's Exhibit 18, the Falk Corporation sent out a notice to the employees in the power house which stated:

"We are not in favor of a union. We do not care to recognize Mr. Kingsland as the bargaining agent for you unless you, as a group, signify your desire to have us do so. We are ready at all times to meet with you as a group or individually and discuss your problems."

The facts further show that Mr. Falk did discuss this matter individually with many of the men. The facts also show that there were fourteen men who had signed applications to join the International Operating Engineers; that sometime thereafter, you received notice of the withdrawal of a number of these men.

Now, taking those facts, in your experience as a labor

1596 man, is it your opinion that the letter of April 16th, Board's Exhibit 18, and Mr. Falk's talk with these men concerning their union affiliation, would or would not have any effect on their remaining in the organization?

Mr. Lamfrom: Before you answer, we object to that question, on the ground it is incompetent, irrelevant and immaterial; and for the further reason that the hypothetical question, if it is a hypothetical question, does not contain all of the facts in the case, much of which is discussed in Mr. Falk's testimony itself.

Trial Examiner Batten: I will be glad, Mr. Lamfrom, to have you add any other facts to that which you recall, that I have not included.

Mr. Lamfrom: If I may have a minute to go over that testimony?

Trial Examiner Batten: Yes. We will recess for a few minutes.

(A short recess was thereupon taken.)

Mr. Rissman: If the Examiner please, because I feel that the facts themselves will be presented in the record, in addition to those facts that are in the record, and the answer, if an answer can be had to the question now pending, is entirely not necessary to my case, or the case of the International Union of Operating Engineers, I will withdraw the last question.

1597 Q. (By Mr. Rissman.) Mr. Kingsland, when did you first receive any withdrawal of application cards from your union by any of the Falk employees?

A. It was May 5th or May 6th, 1937.

Q. Prior to that time, had any employee ever withdrawn from membership of the union, any Falk employee?

A. None.

Q. Prior to that time, had the Falk employees been attending union meetings?

A. They had.

Q. Prior to May 5th or May 6th, did any employees of the Falk Company say to you that they did not desire to be members of your union?

A. No.

Q. You are talking, now, about those who already signed their cards, and paid part of their initiation fee?

A. I am.

Q. Do you know if, prior to the meeting of April 18th, 1937, or the meeting called to be scheduled on that date, the employees indicated to you that they did not wish to be represented by your union?

A. They did not.

Q. What was the first indication you had that these fourteen men, who had signed application cards in your organization, were not interested in your union?

1598 A. When I received the letters of May 5th or 6th.

Q. Do you know what, if anything, occurred that resulted in the non-attendance of these men at the meeting of April 18th?

A. Yes.
Q. What?
A. The men, after I had had the meeting with Mr. Falk on nday, April 12th, these men were talked to by Mr. Falk, l then following that, April 16th, Friday of the same week, t letter was posted in the power plant, and the meeting t we wanted held was for Sunday, April 18th, and no one wed up at that meeting.
Q. Now, since April 18th, have you seen any of these men, ve they come around to you, any of those who have sent in ir withdrawals?
A. Not to me personally, there are none that I know of.
Q. Since May 5th or 6th, when you received these letters, ve any of these men come around to the union, or to you, t you know of?
A. The men whom I received these letters from?
Q. The men who withdrew.
A. No, they have not.
Q. Or any of the other men who signed application cards?
A. Yes, two of them are now members.
Q. And only two of the original fourteen have indi-
9 cated any interest in the union since that time?
A. Yes.
Q. I hand you herewith Board's Exhibit No. 36 for iden-cation, and ask you if this isn't a list of the men who ned applications in Local Union No. 311, members of The lk Corporation, with the date of the signing of their ap-cation appearing after each name?
A. It is, and the dates are correct, to the best of my knowl-ge.
Mr. Rissman: I offer Board's Exhibit 36 in evidence.
Mr. Lamfrom: We have not seen it.
Mr. Rissman: Do you want to see it?
Mr. Lamfrom: Yes.
Mr. Rissman: Any objection?
Mr. Lamfrom: No.
Trial Examiner Batten: There being no objection, it will received.
(Thereupon, the document above referred to, marked BOARD'S EXHIBIT NO. 36, was received in evidence.)
Q. (By Mr. Rissman.) Since April 12, 1937, have you had y conferences or meetings with Mr. Falk, or anybody repre-nting the company?
A. Yes.

Q. With whom?

1600 A. In Mr. Lamfrom's office, with Mr. Lamfrom and Mr. Falk present, Mr. A. G. Goldberg; Mr. Vern Biesel, president of the union at that time; and myself.

Q. What conversation took place at that time?

A. Well, as to the reason why Mr. Falk would not recognize our right to bargain for these men, discussed the National Labor Relations Act to a certain extent, different points were brought out, and Mr. Falk, I understood at that time, seemed to be willing to recognize us as bargaining agents of the men.

Just what date that was, I can't recollect.

Q. Was it after May 5, 1937, after you received these letters of withdrawal? Or, I think you said May 6th.

A. I am not sure, I am not sure.

Q. Were you present this morning, Mr. Kingsland, when there was read into the record a stipulation entered into between your union and the Amalgamated Association of Iron, Steel and Tin Workers?

A. I was.

Q. And you have no objections to that stipulation?

A. I have none.

Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Engelhard.) At that conference in Mr. Lamfrom's office, didn't Mr. Falk say to you that he

1601 could not recognize your union because the Independent Union represented a majority of the employees?

A. I don't recall as to that, as to whether that statement was made.

Q. Did he say that he would recognize your union?

A. No, not definitely. We were led to believe so.

Q. What did he say that led you to believe that he would recognize Local 311?

A. Well, that he had no objection to a union, if the men preferred it, and the majority wanted it.

Q. Didn't he say that he had recognized the Independent Union because it represented a majority of the employees?

A. I don't remember.

Q. You don't remember that. Now, you stated before that these men attended union meetings prior to May 6th, but not thereafter, is that a correct statement?

A. Yes, prior to May 6th.

Q. Isn't it a fact that they didn't come to a meeting at all on April 18th?

A. That is true; then that should have been prior to April 18th.

Q. You stated that you know that the letter of April 16th was posted in the power house. How do you know that?

A. Some of the other men came into the office and told me about it.

1602 Q. The fact is, though, that the letters were mailed to them individually.

A. The letters, yes, those letters.

Q. The one posted in the power house?

A. Those letters—I beg your pardon, I should have said "bulletin", I believe it was a bulletin.

Q. You don't know how they got the letters, except from what has been told you?

A. Yes, true.

Q. I show you Board's Exhibit 19, and ask you whether you saw a copy of that at any time?

A. Not until after—yes, I had seen copies of it.

Q. Will you read that to yourself? Does that speak the truth?

A. Yes.

Q. In your discussion with Mr. Falk, had you arrived at any agreement with him regarding wages?

Mr. Goldberg: If the Examiner please, there is nothing on that card that says anything about wages or any agreement of wages.

Mr. Engelhard: I am not asking whether there is anything on this card about wages. I am asking him whether, when he had his conference with Mr. Falk, any agreement had been arrived at as to wages, in the power plant.

Trial Examiner Batten: I think it is a proper ques-
1603 tion to ask him, whether in his meeting with Mr. Falk, any agreements were arrived at, or arrangements made.

Q. (By Mr. Engelhard.) As regards wages?

A. Not definitely.

Q. As regards seniority rights?

A. I believe Mr. Falk mentioned that as far as the seniority rights were concerned, the company had always recognized seniority rights.

Q. Did he enter into any agreement with you as to what seniority rights he would recognize?

A. No, he did not.

Q. What terms of any contract had you and he agreed upon when you left?

A. None, at the time.

Q. None at the time?

A. No contract agreed upon.

Q. I stated, "terms of a contract."

A. No terms.

Q. No terms whatever?

A. True.

Q. Then this statement in this card that, "Only the hours that you men wish to work remains to be settled", is not the fact, is it?

A. To a certain extent, yes.

Q. Now, Mr. Kingsland, you said you had not agreed
1604 on any terms of any contract with Mr. Falk when you left him?

A. No, we hadn't come to an agreement. We had discussed terms, though.

Q. You hadn't come to any agreement?

A. No.

Q. That the wages would be such-and-such?

A. No.

Q. That the hours would be such-and-such?

A. No.

Q. Or seniority rights would be such-and-such?

A. No.

Q. But still, this post card says: "Only the hours that you men wish to work remains to be settled." I am asking you whether or not that statement is a fact.

Mr. Goldberg: It is further qualified by the next sentence; I submit.

Trial Examiner Batten: I think the witness is qualified to explain what he meant by this card, and the terms on it.

Mr. Lamfrom: This is not his card, if the Examiner please.

Mr. Goldberg: If the Examiner please, the point I make here is the sentence in the card, "Only the hours that you men wish to work remains to be settled." "Other minor conditions that you wish to insert in the contract will be dis-
1605 cussed at a meeting to be held Sunday morning, April 18th, at our office."

In other words, the card indicates there is more than just only hours, even though that one sentence is put that way.

Mr. Engelhard: I submit, Mr. Goldberg, that I am cross-examining this witness about this card, and I don't think it is proper for you to suggest anything in connection with this cross-examination. When I am through, if you want to correct any of his testimony by you asking him questions, well and good; but I think I have a right to test this.

I am not saying that he made this representation.

Q. (By Mr. Engelhard.) This card is not signed by you, is it?

A. It is not.

Q. It was someone else who drew up this card. I am asking you whether or not the gentleman who drew up that card stated the facts when he said, "Only the hours that you men wish to work remains to be settled."

Mr. Goldberg: If I may state my objection—

Trial Examiner Batten: Yes.

Mr. Goldberg (Continuing): —I say to pick out the sentence, in and of itself, when there is this qualifying sentence, is unfair to the party writing it.

Trial Examiner Batten: I think, Mr. Goldberg, the witness knows that the postal card contains more than
1606 these few words, and, knowing that fact, he is in a position to answer this question.

Mr. Goldberg: Why?

Mr. Engelhard: I am asking the witness.

Q. (By Mr. Engelhard.) You know what is on this card?

Mr. Rissman: Will you answer for the record, Mr. Kingsland? When you nod your head, it does not appear.

The Witness: A. The way that sentence is written, it is not true.

Q. (By Mr. Engelhard.) You certainly would not consider among minor conditions the question of wages, would you?

A. No.

Q. That is probably one of the major questions that arises in the matter of a contract?

A. Yes.

Q. Furthermore, isn't the matter of a closed shop also a very important term of a contract?

A. It is.

Q. You would not include that in minor conditions?

A. No, I don't believe so.

Q. When you discussed with Mr. Falk, did you discuss the question of closed shop?

A. No, I don't think we did.

Q. So, as I understand it, you say that this statement, "Only the hours you men wish to work remains to be
1607 settled" is not true, is not a fact?

A. If I could see the other things that would link that sentence up, I could explain that sentence better.

Q. I am asking you whether or not a person receiving this card and reading that sentence, "Only the hours that you men wish to work remains to be settled"—whether or not that statement, read by him, was a fact?

A. Not the way the sentence is written.

Q. Had Mr. Falk and you came to an agreement at that conference, that Mr. Falk would recognize your union?

A. No. He wanted to talk with the men first.

Q. There was no agreement of any kind entered into between Mr. Falk or you as to some future meeting?

A. Yes.

Q. Between you and him?

A. Yes.

Q. What was that agreement?

A. That I submit a list of the names of the men that I represent, the fourteen names.

Q. As you testified, you did not do that on advice of counsel?

A. Correct.

Q. Did you ever since that time attempt to see Mr. Falk?

A. No, outside of the meeting in Mr. Lamfrom's office.

Q. That is the only time that you saw him?

1608 A. That's right.

Q. You had agreed with Mr. Falk that you would submit a list of names when you left?

A. Yes, I did.

Q. Before you left?

A. I did.

Q. After you were advised by your counsel not to submit the list of names, did you ever notify Mr. Falk that you wouldn't submit the list?

A. No, I did not.

Q. When you met Mr. Falk in Mr. Lamfrom's office, did you at that time indicate to him why you did not submit a list of names?

A. I am not sure whether I did or not. Mr. Goldberg was at this meeting. I had explained everything to him, that had been told Mr. Falk, and expected him to tell it.

Q. You don't know, of course, why the five men who notified you that they were withdrawing their application cards—you don't know what their motive was?

Mr. Rissman: You mean the motive, or reason?

Q. (By Mr. Engelhard.) I understand you stated you had no personal contact with any of these men?

A. Not those, no.

Q. Do you know whether they joined some other labor organization?

609 A. I don't know.

Q. Did that card speak the truth when it said that that visit with Mr. Falk was favorable?

A. Yes. I was impressed as such.

Q. You say that the outcome of your visit was very favorable?

A. Yes.

Q. Is it correct to say that the inference may be drawn from this card that The Falk Corporation would enter into a contract with your union, except for the matter of settling the question of hours, and some other minor matters?

Mr. Rissman: I object to the question. It calls for an opinion and an inference, and a lot of things that are not said in that card, and that cannot be intended from that card.

Trial Examiner Batten: Objection sustained.

Q. (By Mr. Engelhard.) You have on this Exhibit 36, which is a list of the men who signed applications, among them you have a Mr. A. Ottman. Do you know how many meetings that man had attended?

A. Since he became a member?

Q. Yes. I will give you the date of his application, March , 1937.

A. You mean our regular meetings?

Q. Yes.

610 A. I couldn't say.

Q. Any meeting?

A. Any meeting. I couldn't say.

Q. Do you know how many meetings Mr. C. Schnader, who sent an application marked May 15, 1937, attended?

A. I couldn't answer that, either.

Q. Those men are still members of your union?

A. They are both members.

Q. You have one man listed here as Mr. Sivright, who signed an application as early as June 15, 1935?

A. Yes.

Q. Do you know whether he is still a member?
A. He is not a member yet.
Q. He is not a member yet?
A. He is not a member yet. If he was, his application would not be on that list.
Q. Do any of these men—
A. Oh, yes, that's right.
Q. I have a list of the men—
A. That's right.
Q. (Continuing.) —in 1936?
A. Mr. Sivright is not a member.
Q. Has he withdrawn?
A. No, he has not withdrawn.
Q. Was he ever a member?
1611 A. Not to my knowledge.
Q. You have it on the list there. I understood your testimony was, that that was a correct list.
Mr. Goldberg: Of applications.
The Witness: A. They had filed applications. Two of these men are members, Ottman and Schnader, that's right, two of those men should be checked.
Q. (By Mr. Engelhard.) Exhibit 36 reads, "The following men are members of Local Union 311." That is not a correct statement, is it?
A. That is not a correct statement.
Q. What is this list supposed to represent?
A. The men who have made application, and also the members, as I get it. I don't know where that list came from, or who made it up.
Q. Did any of the men on this list become actual members of Local 311?
A. They did.
Q. Who are they?
A. Ottman and Schnader.
Q. And the others never became members of the union?
A. No.
Q. That is, they had never become entitled to any rights as members of Local 311?
A. No, they have not.
1612 Q. Are Ottman and Schnader still attending union meetings, so far as you know?
A. Yes, so far as I know. Of course, I believe they changed shifts at the plant, and at times they work nights, and can't attend the meetings. And again, I believe I have

seen both of them there at some time or other. I couldn't say. We meet twice a month.

Q. They are the only people who are entitled to attend your meetings, aren't they?

A. They are.

Q. This meeting of April 18th wasn't a meeting of the local?

A. No.

Q. That was merely a so-called organization meeting?

A. For the power plant.

Q. Yes.

A. The employees in the power plant.

Q. That would, of course, mean that Ottman and Schnader were not invited to that meeting, if you know?

A. They probably were, because I don't know just when they were initiated, how long they had been members, I can't recollect.

Q. How do you account for the fact that Mr. Sivright, who put in his application as early as June 15, 1935, had not become a member?

1613 A. That I don't know. That is before my time with the union as a representative.

Mr. Goldberg: May I show you a card?

I think you will have no objection. I just notice, I don't know whether Mr. Kingsland did, that Sivright is an employee of the New-Way Service Laundry. I don't know whether that will be of some significance. He signed up, and then he never went through with it at that time.

Mr. Engelhard: That is Sivright, or whatever his name is?

Mr. Goldberg: Yes.

Mr. Engelhardt: He was in a laundry, you say?

Mr. Goldberg: Yes. I don't want to put that in the record.

Mr. Engelhard: No.

Mr. Goldberg: But let him look at it to refresh his recollection.

The Witness: I never noticed that.

(Mr. Engelhard handing paper to the witness.)

The Witness: A. Oh, yes.

Q. (By Mr. Engelhard.) That means that he was a member of your local at one time?

A. No.

Q. That is merely his application?

A. That is merely his application. He did not pay
1614 the full initiation fee.

Q. I see. That shows he paid $2.00 on the 27th of March, 1937?

A. Yes.

(Discussion outside the record.)

Mr. Lamfrom: It is stipulated and agreed by and between counsel for the International Union of Operating Engineers, Local 311, and counsel for Falk Corporation, that on April 28, 1937, a meeting was had at the office of the attorneys of record here for the respondent, at which were present Mr. Kingsland, Mr. Goldberg.

Q. (By Mr. Lamfrom.) Who were those other two gentlemen?

A. Mr. Bissel.

Q. Is that all?

A. And myself, yes.

Mr. Lamfrom: Yes. And Mr. Falk and Mr. Lamfrom, and the substance of the meeting was as follows:

The Union, represented by Mr. Kingsland and Mr. Goldberg, asked for collective bargaining rights for the union for the power house employees, and Mr. Lamfrom and Mr. Falk informed Mr. Kingsland and Mr. Goldberg that it was impossible for The Falk Corporation to recognize the union as the collective bargaining agent for the power house employees, because the company, The Falk Corporation, had already recognized the Independent Union of Falk Em-
1615 ployees as the bargaining agent for the employees of The Falk Corporation, as representing the majority of such employees.

Q. (By Mr. Lamfrom.) Mr. Kingsland, since I dictated this stipulation, your mind is refreshed?

A. Right.

Q. And that is substantially what occurred?

A. That's right, correct.

Trial Examiner Batten: Are there any further questions from Mr. Kingsland?

Mr. Goldberg: Am I next in order?

Q. (By Mr. Goldberg.) You stated, Mr. Kingsland, that the conference with Mr. Falk was favorable. Will you please tell us why you considered favorable?

A. I went in and introduced myself to Mr. Falk, I explained to him that I had fourteen applicants from his power house, fourteen out of the seventeen men in his plant coming

under our jurisdiction, and wanted him to recognize us as their bargaining agent, and, after some discussion, explaining the way we worked and bargained for our men, and also the scale of wages and hours, he impressed me as being favorable towards recognizing us, but that he wanted to talk to the men first.

Q. Did you tell him what your scale of wages was?

A. I did.

1616 Q. What did you tell him in that regard?

A. That we are trying to put in a 40-hour week in all the plants, as near as possible to 40-hours, and that, as his plant was working 48-hours, we requested to shorten the hours in this plant to work a 40-hour week.

Q. What about wages?

A. With the wages to remain the same, thus bringing them up to our scale.

Q. You mean the weekly wage to remain the same?

A. The monthly wage to remain the same.

Q. What is your hourly wage set-up, of your union, in the City of Milwaukee?

A. At that time, it was eighty cents an hour for firemen, $1.00 an hour for engineers.

Since then, under the agreements maintained since the first of this month, $1.15 and ninety cents.

Q. Did you investigate what the men were receiving at The Falk Corporation at that time?

A. I don't think I did. I did mention that it was under our scale.

Q. It was under your scale?

A. It was under our scale, I know that.

Q. Did Mr. Falk make any remark as to how their wages compared to the union scale of wages, even on an hourly basis?

1617 A. I believe he did.

Q. What did he say?

A. That as far as he knew, the Falk Corporation was paying as good wages as any plant; and I pointed out to him that we had agreements in other plants whereby they were paying more, paying our scale.

Q. Did he indicate whether it would be a hardship to meet your scale or not?

A. No, he did not.

Q. To The Falk Corporation?

A. No, he did not.

Q. He did not?
A. He did not.
Q. Did anything occur within your union, internally, that you know about, that might have influenced the men to discontinue their application, and desire to become members of your union, between the date that you spoke with Mr. Falk, and the present date?
A. I didn't get the beginning of that question.
Mr. Goldberg: Will you read the question?
(Question read by the reporter.)
The Witness: A. No.
Q. (By Mr. Goldberg.) Do you feel, or do you have an opinion as to whether that notice posted on the company's bulletin board in the power house had any effect on
1618 the men's desire to continue their membership in your union?
A. Yes.
Mr. Lamfrom: That is objected to as incompetent, irrelevant and immaterial.
Trial Examiner Batten: I think he may state. He is the head of the union.
Mr. Lamfrom: Of course, we need a lot of head there.
Trial Examiner Batten: He just asked him whether he had an opinion.
Mr. Lamfrom: The Examiner is plainly right. I apologize.
Q. (By Mr. Goldberg.) What is your opinion?
Mr. Engelhard: Before you answer that, we object as being incompetent, irrelevant and immaterial, as to what his interpretative value is. That is for the Board to determine.
Trial Examiner Batten: The question, as asked, I don't believe calls for an interpretation. It calls for an opinion.
Mr. Engelhard: It opens the door for an interpretation. He could not express an opinion without it.
Trial Examiner Batten: I will sustain the objection as to his opinion. I presume you are referring, Mr. Goldberg, to Exhibit 31, that letter?
Mr. Goldberg: The one not in favor of the union.
1619 Trial Examiner Batten: I say, that is the exhibit you are referring to?
Mr. Goldberg: I think it is Exhibit 18, or 19.
Trial Examiner Batten: Exhibit 18. That's right. I will sustain the objection.
Mr. Goldberg: If the Examiner please, while I am on cross-examination, now, after a fashion, I would like to take this

ness and introduce testimony with regard to the unit, to
ke it very brief, insofar as the Independent Union does
join in the stipulation.
There is the possibility that that question might arise, as
whether there ought to be a separate unit set up.
Trial Examiner Batten: You may proceed.
Mr. Goldberg: I say, if at this time I could do it?
Trial Examiner Batten: As I understand, when you have
shed with this witness along that line of questioning, it is
ur thought that, as far as your part of the case is con-
ned, you will be finished?
Mr. Goldberg: That's right. I do not plan on attending
y other hearings, unless something comes up of importance.
Trial Examiner Batten: I think you should proceed, and
will finish that part of it.
Mr. Engelhard: May I make this suggestion: That
20 all the cross-examination be finished, and then he can
turn him into his own witness. That is the point.
Trial Examiner Batten: Yes.
Mr. Lamfrom: If I may, I would like to ask Mr. Kings-
d one or two questions.
Trial Examiner Batten: I believe Mr. Clark hasn't ques-
ned him as yet.
Mr. Clark: I think Mr. Clark has no questions.
Trial Examiner Batten: Do I understand, Mr. Lamfrom,
t your questions are in the nature of cross-examination?
Mr. Lamfrom: Yes and no. I think there are only two,
d they are questions which haven't covered—
Trial Examiner Batten: I was just wondering whether
was the same "few" that you spoke about yesterday, that
. Engelhard wanted to ask.
Mr. Lamfrom: No.
Mr. Engelhard: There was not a meeting of minds on that.
Trial Examiner Batten: Well, go ahead.
Q. (By Mr. Lamfrom.) In the conversation that you
d with Mr. Falk, when you first saw him at his office, and
question of the scale came up, did Mr. Falk tell you that
e Falk Corporation paid the engineers monthly, that is, the
ployees of the power house, monthly, and tell you the
monthly rate which they paid them?
31 A. I don't think he told me the rate at which they
were paid, but he told me they were on the monthly rate.
Q. Did you know what the monthly rate was?
A. Yes, I knew what it was before that.

Q. Did you know the number of hours that were worked?
A. Yes, I did.
Q. How did their monthly rate compare with the other companies in the city who had contracts with your union?
Mr. Rissman: I object, if the Examiner pleases, as entirely immaterial. We are not concerned with wages and hours.
Mr. Lamfrom: There was some evidence brought out by Mr. Goldberg with respect to that.
Trial Examiner Batten: With respect to the comparison? I do not consider it at all material how the wages of this firm—
Mr. Lamfrom: Except that there was some suggestion here.
Trial Examiner Batten: (Continuing.) —compared with other companies. I might say, I consider it to be immaterial, Mr. Lamfrom.
Mr. Lamfrom: If you say it, that ends the matter. I didn't know whether you did or not.
Trial Examiner Batten: I do not consider that at all material to the issues.
1622 Mr. Goldberg: May I suggest, it didn't really come out as a response to my question. It was volunteered by the witness.
Mr. Lamfrom: All right. I did not consider it material, but I did not want to leave the inference in the record that The Falk Corporation paid lower wages.
Mr. Rissman: It doesn't make any difference in the record.
Trial Examiner Batten: As I say, I do not consider it at all material in this case, I don't think the question of wages is in issue.
Mr. Rissman: Not yet.
Mr. Lamfrom: What do you mean by "not yet"? You said the wages are not in issue, and he said "not yet." I just want to inquire, confidentially, off the record, what he means.
Trial Examiner Batten: Are you through, Mr. Lamfrom?
Mr. Lamfrom: Yes.
Trial Examiner Batten: Proceed, Mr. Goldberg.

IL J. KINGSLAND, a witness called for and on behalf f the International Union of Operating Engineers, Local 11, having been previously duly sworn, was examined and estified further as follows:

Direct Examination.

3 Q. (By Mr. Goldberg.) Are you an operating engineer yourself?
A. I was, yes.
Q. For how many years were you an operating engineer?
A. Well, I first learned the trade seventeen or eighteen rs ago.
Q. It requires a license to perform the business of an rating engineer in the City of Milwaukee, does it?
A. It does.
Q. Are you a licensed engineer?
A. I am.
Q. When were you given license?
A. Fourteen years ago, 1922.
Q. And were you actively engaged in that business since eiving the license, up to the time that you took over your ies as business agent for the International Union of Operng Engineers?
A. I was.
Q. By who were you employed?
A. My last employer was The City of Milwaukee.
Q. And you resigned your position there to take over r duties as business agent?
A. I did.
Q. Do you know whether it requires a license to perform the duties performed by the employees in the power 4 house of The Falk Corporation?
A. Yes, it does.
Q. Do you know of your own knowledge whether those n at the power plant do have licenses?
A. They have to have, under the City ordinance.
Q. The nature of their work is such that they cannot be ted around the plant, is that true?
What is the fact with regard to whether other employees be shifted on to their type of work?
A. Other employees cannot take any of their jobs, unless y happen to be licensed engineers.

Q. Where is the power plant located?
A. Separate from the rest of the plant.
Q. It is set up as a separate building?
A. The building probably adjoins the plant—no, I don't think—I am not sure about that.
Mr. Goldberg: Perhaps another witness will be able to tell us.
Trial Examiner Batten: There is testimony here showing that it is separate and distinct. It has been testified to, as to its physical layout.
Q. (By Mr. Goldberg.) There is a certain amount of skill required in the performance of the duties of an operating engineer at The Falk Corporation?
A. There is.
1625 Q. Do you know how many men are employed at the power plant?
A. I thought at that time that there were seventeen, but I have reason to believe now that in all, there are fifteen inside of the power plant.
Q. Do you know of any other individuals in the employ of The Falk Corporation that do work of the same nature, requiring skill of that type, in The Falk Corporation?
A. Yes, I understand there are two on the outside, operating a locomotive crane.
Q. There are two on the crane?
A. Yes.
Q. Do you know whether or not a license is required by the City of Milwaukee to be a crane operator?
A. There is, if they are steam-driven.
Q. The testimony of Mr. Falk was that they are steam-driven.
A. They must have a license.
Q. Are they subject to the jurisdiction of your union?
A. They are.
Q. Is your organization so constituted as to be able to represent and bargain for those employees?
A. They are.
Q. You have contracts with a number of employers having operating engineers employed by them?
1626 A. We have.
Q. And how many contacts, or approximately how many contracts, does your union have for men employed in the City of Milwaukee?
A. I would say we have men at from 225 to 250 plants,

but not all of them have we contracts with. At some plants, they have only one or two men.

Q. In such instances, you do the bargaining, however, with the employer?

A. We do.

Q. And on occasion, it is not reduced to writing, as I understand from some of your testimony?

A. That is true.

Q. Is it your endeavor to get a high scale of wages in this type of work, and a uniform scale of wages?

A. It is.

Q. Among these contracts that you have, do you have contracts with any other employers where the situation is similar to the one as it exists in The Falk Corporation with regard to various crafts existing?

A. We have.

Q. And in these instances, do you bargain for the operating engineers?

A. We do.

Q. You have made contract with those employers 1627 each year?

A. We do.

Q. You feel that your union could best represent these seventeen men?

A. Yes.

Q. And if the Board sees fit to order an election to determine the bargaining agent for the employees of The Falk Corporation, what is your opinion as to whether a separate unit ought to be set up for these seventeen men?

A. I believe that a separate unit of the power house employees and locomotive crane operators should be set up and bargained for separately.

Q. Do you know what the desire of the men employed at the power plant, and the other two men operating the cranes is with regard to a bargaining representative?

A. Before I went out to see Mr. Falk, they were very favorably inclined, I take it they were naturally so, or they wouldn't have filed application.

Q. Is it the desire of your union to represent the power house and the two crane operators for the purpose of collective bargaining?

A. It is.

Q. And your presence here indicates that, as well as your petition to intervene?

A. It does.
1628 Q. Is that true?
A. That is true.
Mr. Goldberg: That's all.

Cross-Examination.

Q. (By Mr. Clark.) What other plants have you in mind when you compare them with The Falk plant?
A. Numerous others.
Q. What, for instance?
A. Seaman Body.
Q. What others?
A. Nordberg's.
Q. Anybody else?
A. Geuder, Paeschke & Frey.
Q. Do you have separate contracts for the power house at those places?
A. We have.
Q. Do you have members of your organization at the Harnischfeger Company?
A. We have.
Q. Do you have a contract with the Harnischfeger for the power plant?
A. Not a contract; a statement of policy.
Q. Has that been changed since the recent C. I. O. activity out there?
A. No—oh, you mean our agreement?
1629 Q. Yes.
A. Why, yes. I was out there to bargain for the men. It has been changed, though.
Q. You have members in your organization who are employed in the power house at the Allis-Chalmers Company?
A. No, we haven't.
Q. Do you know who the operating engineers at the Allis-Chalmers are represented by?
A. I do not.
Q. Do you know of any power engineers in plants other than where you have members, how they are represented?
A. No, I do not.
Q. So there are many instances where power engineers are represented by other than your local?
A. I don't believe so.
Q. Who represents the men at Allis-Chalmers?

A. I don't know. There is more than one plant.
Q. But you don't represent them?
A. No.
Q. Is the license required for locomotive crane operators the same as that required for operating engineers?
A. They both are steam-driven. There are different grades of license. The license of a horsepower locomotive crane is not near as much as the license of the horsepower of a steam crane.
1630 Q. With reference to The Falk Company, are you familiar with how the power house has been treated by the management out there, as to its being a separate unit?
A. How they have been treated?
Q. As to it being a separate unit.
A. No.
Q. For other purposes than collective bargaining?
A. No, I am not.
Q. Are you familiar with the set-up of monthly salary in that power house out there?
A. I am.
Q. That is about the same as the monthly salary at other departments of The Falk Company, isn't it?
A. I don't know about the other departments of Falk Company.
Q. As I understand it, you have two members in your local who are now employed by The Falk Company?
A. Right.
Q. You have had applications from others, and they have been withdrawn?
A. Not all of them.
Q. When does a man become a member of your local?
A. When he has paid his initiation fee in full.
Q. The two that you spoke of are the only ones who have done that, is that right?
1631 A. Correct.
Mr. Clark: I think that's all.
Trial Examiner Batten: Are there any further questions of this witness?
Mr. Goldberg: Yes, I want to ask Mr. Kingsland:

Redirect Examination.

Q. (By Mr. Goldberg) Are you familiar with whether the other production employees and maintenance men of the plant are paid on either the monthly or hourly or office work rate?

A. I am not.

Q. You don't know that?

A. I don't know a thing about it.

Mr. Goldberg: I think we ought to get a stipulation into the record. The company can inform us as to what the situtation is, and I think that is material.

Trial Examiner Batten: I presume there will be someone from the company on the stand?

Mr. Lamfrom: That will all be shown.

Trial Examiner Batten: That will all be shown.

Mr. Lamfrom: We will show you the exact situation here with regard to that.

Trial Examiner Batten: If Mr. Rissman can keep it in mind.

Mr. Rissman: I will make a note of it.

1632 Trial Examiner Batten: Mr. Rissman can also keep in mind, when the superintendent or someone is on, to see that that matter is set forth in the record.

Cross-Examination (Continued).

Q. (By Mr. Rissman) Mr. Kingsland, do you know of another company that employs more than two men, under your jurisdiction, other than the Allis-Chalmers Company, that does not have a contract, that has had a labor controversy with your union, in the City of Milwaukee?

A. I can't think of any.

Q. You have canvassed the city pretty thoroughly, and attempted to get contracts wherever they employ any operating engineers, isn't that true?

A. Yes.

Q. And if there is such an instance in existence, it has escaped your attention?

A. It has, if there is.

Mr. Goldberg: That's all.

Trial Examiner Batten: Is there any further examination of this witness?

Q. (By Mr. Clark) You were asked a question, or I think you made the statement, that the employees of the power plant had signified their intention to have your local represent them, by reason of their application?

A. Yes.

1633 Q. Would the fact that they now ask to have their application withdrawn indicate that they do not want you to represent them?

A. I don't believe so.

Q. You feel that they still would like to have your local represent them for the purpose of collective bargaining?

A. I do.

Q. Despite the fact that they have asked you to return their fee and application?

A. Yes.

Q. Why do you feel that way?

A. Well, I feel that they became frightened when Mr. Falk spoke to them, intimidated, coerced; they did that, feeling they were frightened, afraid of losing their jobs.

Q. Do you think, if a suitable order were given by the Board restraining the company from interference and intimidation, that the men's action in withdrawing from your union would be changed, and that they would again desire your union?

A. I believe so.

Mr. Clark: That's all.

Trial Examiner Batten: Is there anything further?

(No response.)

Trial Examiner Batten: You may be excused.

(Witness excused.)

1634 Mr. Rissman: Mr. Srok.

ANTON SROK, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) Will you state your name, please?

A. Anton Srok.

Mr. Lamfrom: What is the name, please?

The Witness: Anton Srok.

Q. (By Mr. Engelhard) Will you spell that name, please?

A. S-r-o-k.

Q. (By Mr. Rissman) Are you employed by The Falk Corporation?

A. Yes, sir.

Q. How long have you been employed there?

A. About eight years, because I was working there before, and then I was absent, and then again.

Q. How long have you been working there this last time?

A. Next month it is going to be three years.

Q. What kind of work are you doing at the present time?

A. Machinist work.

Q. Are you a member of any labor organization?

A. Yes, sir.

Q. Which one.

1635 A. C. I. O.

Q. The Amalgamated Association of Iron, Steel and Tin Workers?

A. Yes, sir.

Q. How long a period were you absent from work at the company? You say you worked there for some time, and were absent?

A. Nine years, about, nine years.

Q. What period was that?

A. It was from June 25, 1925, up to September 17, 1934.

Q. (By Mr. Engelhard) You don't mean years, then? You mean months, don't you?

A. No, no. He says "period", so that is the period, nine years.

Mr. Risman: 1925 to 1934.

Mr. Engelhard: Pardon me. I misunderstood him. 1925.

Q. (By Mr. Rissman) Directing your attention to August 1933, were you in or around the Falk Corporation plant at that time?

A. I was.

Q. What were you doing there?

A. I was looking for job.

Q. At that time, did you have occasion to speak to Mr. Harold Falk?

1636 A. Mr. Harold Falk met me in the shop, yes, and I spoke to him.

Q. Tell us what he said and tell us what you said as closely as you remember.

A. Mr. Harold Falk remembered me from before, and he says what I am looking around there, and I told him that a man like me don't look for nothing else but for a job.

Then Mr. Harold Falk said that Mr. Green—not Mr. Green, but Mr. Senn is not in the shop now, he is sick, so I should come some other time.

Q. What other conversation did you have with Mr. Falk at that time.

A. I asked him how does he feel, as I usually ask a person when I meet him, and he says, "Well, not so good."

I said, "What's the matter," and so on, and he says that they had election in the shop, and the boys didn't vote as they expected them to.

Q. Did he state to what election he referred?

A. Well, I didn't really ask him, but he says that he feels, and the company feels, that they should sit down by the table together with the workers, and start something to better the conditions in the shop.

Q. Do you know what kind of elections took place in the shop just around that time?

A. Well, the fellows told me in the shop, they were 1637 for outside unions. I asked some fellows what was the trouble, see, and they told me that they vote for outside union, as I understand.

Q. Mr. Srok, during the first time you worked in the factory, the first period that you worked there, before 1925, were you a member of a labor organization?

A. You mean during the time that I was employed there?

Q. Yes.

A. No.

Q. Were there ever any attempts by labor organizations to organize the plant at that time?

A. No, not that I know of.

Q. Were you ever engaged, at any time that you worked with the Falk Company, in an attempt to organize a labor union?

A. Yes, at one time there was.

Q. When was the time?

A. It was about two years ago.

Q. Yes.

A. 1935, I think.

Q. Yes.

A. When some fellows tried to organize Federal Union there.

Q. Who were the fellows who tried to organize it?

A. Well, I can't remember all the names.

Q. About how many of them were there?

1638 A. There was about thirteen fellows met together.
Q. Were you one of them?
A. I was there, because I was called to come there.
Q. Did you participate with them in the attempt to organize a Federal Union?
A. Yes.
Q. What did you men do in that attempt, how did you go about attempting to organize a Federal Union?
A. We met one Sunday morning in a saloon, and we sat around a table there, and we decided that we want to go and see Mr. Seidy the next Saturday morning.
Q. You refer, now, to Herman Seidy, the secretary of the Milwaukee Federation Trades Council?
A. Yes.
Q. Go ahead.
A. Then we got together again, there wasn't as many, I don't remember exactly how many fellows was there then, but we go down there, and we asked Mr. Seidy—one of the men that was at the head of us, he asked Mr. Seidy if he could grant us a charter for Federal Union at The Falk Corporation plant.
Q. What did Mr. Seidy say?
A. Mr. Seidy then, he says, "I thought you know better than that."
1639 Q. What else did he say.
A. He says; "I am not going to walk across the street to organize anybody at all."
And then I said to him, I said, "We are right here, and yet you don't want to organize us."
Q. Did Mr. Seidy say why he didn't want to organize the workers at the Falk plant?
A. Well, he was referring to craft union, he wants crafts, he wants machinists to be in a crafts union.
Q. And he didn't want to grant you a Federal charter?
A. No.
Q. During the time that you have worked at the plant, Mr. Srok, have you ever been approached to join the Independent Union of Falk Employees?
A. I was not.
Q. Did anybody ever ask you to join that union?
A. Nobody never asked me to join the Independent Union.
Q. Since you have been a member of the C. I. O. Union, have you worn your C. I. O button in the shop?
A. Yes, sir.

Q. And have you ever been questioned about the wearing of that button by any foreman or supervisor?

A. No, not by any foreman or supervisor, no.

Q. Have you been questioned by anybody?

A. Yes, by one official of the Independent.

1640 Q. What did he say?

A. Why, he happened to pass by.

Q. (By Trial Examiner Batten) Was this during working hours?

A. This was during working hours, when I started to work, afternoon.

Q. (By Mr. Rissman) In the plant?

A. In the plant.

He passed by, because his business is—

Q. Well, just tell us what he said.

Mr. Clark: I think the individual should be identified, if the witness can identify him.

The Witness: His name is Benny Moejis. He is secretary of the Independent Union.

Q. (By Mr. Rissman) Tell us what Benny Moejis said.

A. Benny Moejis came to me, and he had one of them beer bottle caps on his shirt, and he says, he says, "Beer I got for this, but what you got for your dollar for that button?" Then he grabbed it and he says, "Did that button give you a job here?"

I say, "No, Mr. Senn give the job to me here, not the button, not the union."

Q. Mr. Senn is your foreman?

A. Yes, he is the general boss on daytime.

Q. Was there anything else said about the button?

1641 A. I said, "Benny, I feel I am with the majority, and that is why I bought this button."

"Oh," he says, "no, you are not in the majority," and so on.

I said, "Well, what do you want me to join? Where do you want me to join? Where should I join then?"

He said, "Why don't you join with us?"

I said, "Who are you?"

He says, "Independent."

I said, "The Independent Union will give you a job here?" That is what I asked him.

Q. What did he say?

A. Then he walked away, and since that time he never stopped.

Q. What kind of work does Mr. Moejis do in the plant?

A. He is a stock chaser.

Q. Tell us what a stock chaser's job is.

A. A stock chaser's job is to see that the job has to be finished first, if the customer wants that job, they want to push the job ahead, see the job is finished and shipped out. That is his job.

Q. He takes care of seeing that the job goes through in accordance with the order for that job?

A. That's right.

Q. Would you have joined the Independent Union if you were solicited for membership?

1642 A. No.

Q. Why not?

A. I don't like Independent Union.

Q. Why don't you like the Independent Union?

Mr. Clark: I submit, that is immaterial.

Trial Examiner Batten: I cannot see that it is material, if he was solicited, and he said he would or wouldn't join. Suppose he didn't. Suppose he thought they were a bunch of thugs, I don't see, Mr. Rissman, it has anything to do with the issues in this case.

Mr. Rissman: I think it is material to get the worker's viewpoint as to why he wouldn't join this particular union, indicating his reason for it, the impression, what kind of a union it is.

Trial Examiner Batten: I don't care what his impression is, if you will just put the facts up here, as to how it was organized, who organized it, and how it operates, I think I am competent to decide what kind of an organization it is, A. F. of L., or C. I. O.; I don't know as I care particularly what his views are about it.

Mr. Rissman: Does the Examiner feel, then, that the opinion of the employee affected by a labor organization is not material as to the issues in this case?

(Discussion on objection.)

Trial Examnier Batten: It will probably take a lot
1643 less time for him to answer this question than to go on with the discussion.

Q. (By Trial Examiner Batten) Do you have an opinion as to why you don't want to join the Independent?

A. Yes.

Q. Express it.

A. I would say that I wouldn't join the Independent Union, because I don't believe that workers should be independent from each other, if they want to accomplish anything at all for themselves.

Q. What do you mean by "independent"?

A. If they are independent from each other, they can't do anything, they are just separated. That is the way I think, and I believe there is some company interference with an independent union. I feel that is so. I don't know if it is true or not, but I feel like that.

Mr. Rissman: That's all.

Mr. Lamfrom: No cross-examination on our part.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I think I have no questions.

Trial Examiner Batten: You may be excused. That's all.

(Witness excused.)

Trial Examiner Batten: We will adjourn until 7:00 o'clock.

1644 (Whereupon, at 5:10 o'clock p. m., a recess was taken until 7:00 o'clock p. m. of the same day.)

1645 Evening Session.

(Whereupon, the hearing was resumed, pursuant to recess, at 7:00 o'clock p. m.)

Trial Examiner Batten: Are we ready to proceed, gentlemen?

Mr. Rissman: Yes.

Trial Examiner Batten: Mr. Clark, you withdrew the original of Board's Exhibit No, 27, and were going to furnish a copy instead. Have you obtained the copy yet?

Mr. Clark: Yes, I have it here.

Trial Examiner Batten: Very well.

STELLAN LARSSON, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) Will you state your name, please?
A. Stellan Larsson.
Q. Are you employed by The Falk Corporation?
A. I am.
Q. How long have you worked there, Mr. Larsson?
A. Eight years and three months.
Q. And in what department are you now employed?
A. Erecting department, assembly.
1646 Q. How long have you been employed in that department?
A. Four years.
Q. Do you know Anton Kinch?
A. I do.
Q. Did you know Mr. Kinch when he was employed in the factory?
A. I did.
Q. Was he employed in the same department with you?
A. He was.
Q. Directing your attention to the Fall of 1936, Mr. Larsson, do you recall that at that time there was a reclassification proposal petition being circulated around the shop?
A. Yes.
Q. Can you tell us if you ever saw Mr. Kinch circulating around the shop with that petition?
A. Mr. Kinch never circulated that petition.
Mr. Lamfrom: Just a minute. The answer is not responsive to the question.
Trial Examiner Batten: Read the question.
(Question read by the reporter.)
Mr. Rissman: I think the answer is responsive.
Mr. Lamfrom: It isn't. He got a little too quick.
Trial Examiner Batten: Perhaps that is the reason I am here.
1647 Q. (By Trial Examiner Batten) You understood the question, Mr. Larsson?
A. I did.
Q. Did you ever see Mr. Kinch circulating petitions?
A. No.

(By Mr. Rissman) Did you ever see employees talk-
o Mr. Kinch about this petition?
Yes.
And where did you see them?
Mostly at Kinch's bench, where he was working.
During the time that you were employed at the fac-
and within the past year, has any supervisory official of
plant ever spoken to you about union affairs, or unions
eneral?
Yes.
Who has spoken to you?
The superintendent, Mr. Green.
When did Mr. Green speak to you?
I don't remember the date.
Can you place the time for us?
It was two days before the C. I. O. meeting, the first
O. meeting.
In what month was that, do you know, Mr. Larsson?
That was in April.
Q. 1937?
A. 1937.
Q. Where did Mr. Green speak to you?
On my job.
What did he say?
I prefer not to use the profanity Mr. Green used.
(By Trial Examiner Batten) That's all right. You
free. Just tell us exactly what he said, no matter what
as.
I was working. Mr. Green came by on my job, and
ed me down from the job, he asked me, "What the hell
ou mean?"
looked at him, I didn't understand what he meant, so I
d him, "What do you mean?"
(By Mr. Rissman) What did he say?
"What do you mean by walking around in the shop?"
looked at him again, I said, "I am not walking around
ne shop."
Yes, you have been walking around in the shop for two
ths, telling the fellows to go to the C. I. O. meeting."
I denied that I had done so, because I had no knowledge
ne C. I. O. meeting.
Had you been walking around in the shop, asking the
to go to the C. I. O. meeting?
I had not.
Q. Had you been walking around the shop, asking
them to go to any meeting?

A. No, sir.
Q. Were you a member of the C. I. O. at the time Mr. Green spoke to you?
A. I was not.
Q. Where were you at the time he spoke to you, what were you doing when he spoke to you?
A. I was scraping bearings.
Q. What else did Mr. Green say at that time, if anything?
A. He threatened to fire me, showed me the door, and the steps leading out of the factory.
Q. What did he say when he showed you the door and the steps leading out of the factory?
A. "I am going to fire you. There is the door and steps."
Q. Did he point to the door, as you have just indicated?
A. Yes.
Q. What effect, if any, did that statement of Mr. Green's have upon you?
A. It did two things to me.
Q. What did it do to you?
A. First, it stopped me from going to the first C. I. O. meeting.
Q. Had you intended to go to the first meeting?
A. Yes.
Q. And why didn't you go?
1650 A. Because I was afraid, I knew I would be spotted.
Mr. Lamfrom: Now, I move that that be stricken.
Trial Examiner Batten: I presume it may remain, if he knew it.
Q. (By Mr. Rissman.) How did you know you were going to be spotted?
A. I felt it.
Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Lamfrom.) After this talk that you had with Mr. Green, you joined the C. I. O., didn't you?
A. I did.
Q. And you are now a member of it?
A. Yes.
Mr. Lamfrom: That's all.
Trial Examiner Batten: Mr. Clark?
Mr. Clark: I have no cross-examination.
Trial Examiner Batten: That's all, Mr. Larsson.
(Witness excused.)
Mr. Rissman: Grant Neal, please.

GRANT NEAL, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

651 Q. (By Mr. Rissman.) Will you state your name?
A. Grant Neal.
Q. You are a brother of William Neal?
A. Yes, sir.
Q. Are you employed by The Falk Corporation?
A. Yes, sir.
Q. How long have you been employed there, Mr. Neal?
A. Between five and a half and six years.
Q. In what department are you now employed?
A. In the foundry, in the large foundry.
Q. Mr. Neal, during the time that you have been employed in the factory, and particularly within the last six months, has any person in a supervisory or management capacity of the company spoken to you about labor organizations?
A. Yes, sir.
Q. Who has spoken to you?
A. The welding boss.
Q. Who?
A. The welding boss. His name is Edinburg.
Q. Edinburg?
A. Edinburg.
Q. Do you refer to Henning Hedberg?
A. That's it, Henny Hedberg.
Mr. Lamfrom: Would you mind speaking a little louder, Mr. Neal?
652 The Witness: A Henny Hedberg, the night welding officer.
Q. (By Mr. Rissman.) And when did he speak to you, if you remember?
A. On Friday night, on May 7th.
Q. While you were working?
A. While I was working.
Q. What did he say, and what did you say?
A. He asked me if I would join the Independent Union here, and I told him "no". He asked me why not. I told him I didn't feel like, right now, that I wanted to join the Independent Union, and he kept on, and he wanted to know

why I didn't, and I told him that I figured I didn't want the Independent Union now.

He said "we all might as well join the Independent Union, and if we don't like the Independent Union, we will switch to the C. I. O."

Q. Did he say anything else about the C. I. O.?

A. Well, he just said you had to pay fifty cents a month in the Independent Union, and it would cost us a dollar a month in the C. I. O.

Q. Is he your boss?

A. No, sir.

Q. In what department is he boss?

A. In the welding department.

1653 Q. Did he speak about any men in his department in connection with union affairs?

A. Not until later on in the conversation.

Q. What did he say?

A. He said he had one man in his department that was a C. I. O. man in the beginning, and they talked to him, and got him in the Independent Union, and he came back and apologized for it.

Q. Did any other management representative of the company ever speak to you about union affairs?

A. Well, not as I know of, any management of any kind.

Q. Any person not a member of the C. I. O.?

A. Well, there has been lots of talk around, but I just couldn't tell you who it was; but this was the only one that I had in particular.

Q. Did any timekeepers ever speak to you?

A. One timekeeper, by the name of Durst.

Q. What is his name?

A. Durst.

Q. When did he speak to you?

A. Well, that was along between the time, the 6th and the 8th, or 10th, of May, along in there.

Q. 1937?

A. 1937.

Q. Where did Mr. Durst speak to you?

1654 A. In the hospital.

Q. During your working hours?

A. During my working hours.

Q. You went to the hospital for treatment?

A. I went to the hospital to have them take some sand out of my eye.

Q. What did the timekeeper say to you at that time?
A. He wanted to know if I was going to join the Independ-
nt Union. I told him, "No, not now."
Q. Did he say anything about any other unions at that
me?
A. No, he didn't say anything, only that the company was
oing to fight the other union.
Q. Did he mention the names of any unions the company
as going to fight?
A. He just says, "The outside union."
Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Lamfrom.) Are you a member of the C. I. O.?
A. I am a member of the C. I. O. now.
Q. When did you become a member?
A. Well, I will say sometime in April. I don't know just
he date.
Mr. Lamfrom: That's all.
Trial Examiner Batten: Mr. Clark?
655 Mr. Clark: I have no questions.
Trial Examiner Batten: That's all, Mr. Neal.
(Witness excused.)
Mr. Rissman: Mr. Paul M. Bartholomew.
Mr. Lamfrom: Just a minute. Before you go ahead, I
ould like to recall Mr. Neal one minute. Will you take the
tand again, Mr. Neal?

GRANT NEAL, a witness called for and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Lamfrom.) When did you have this conver-
ation that you testified to with the timekeeper?
A. Sometime between the 6th and the 10th or 11th of May.
Mr. Lamfrom: That's all.
(Witness excused.)
Mr. Rissman: Mr. Joseph Pemper.

JOSEPH PEMPER, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman.) Will you state your name, please?
A. Joseph Pemper.
1656 Q. And where are you employed?
A. The Falk Corporation.
Q. How long have you been employed there?
A. I started to work there in 1916, March 7th. Off and on, I have been there since.
Q. How long has been your last period of employment with the company?
A. The 15th of October, 1935, I started there the last time.
Q. What kind of work do you do there, Mr. Pemper?
A. I am a machinist there.
Q. Who is your present foreman?
A. Charlie Walter.
Q. During the time of your employment, has a management representative of the company ever spoken to you about union matters, during the past six months?
A. Yes.
Q. Who?
A. Mr. Green.
Q. Harry Green, the superintendent?
A. Yes.
Q. What was it Mr. Green said to you? What did he say to you? Will you tell us what it was?
A. He stopped me on the way going home, he said, "I am surprised." And I was surprised, I didn't know what
1657 he was talking about.
I said, "What do you mean, Mr. Green?"
He said, "I hear that you are organizing," and that pretty near knocked me off my feet.
I said, "I still don't understand you, Mr. Green."
He said, "You are working for the C. I. O."
I said, "That is news to me." I told him, "You have been misinformed by your informer."
Q. Do you recall when that conversation took place?
A. About the 11th of April.
Q. At that time, Mr. Pemper, at the time Mr. Green spoke to you, were you a member of the C. I. O.?

A. No.
Q. Are you a member now?
A. Yes.
Q. When did you join?
A. The 14th of April.
Q. Did Mr. Green say anything else at that time?
A. Well, he says that he didn't see why we should give our money to the bloody Jews, that we could give it to the men that we work with.
Q. Did he indicate to whom he referred to?
A. No, outside of saying for our own union.
Q. Did Mr. Green say why he was surprised that you were working for the C. I. O.?
658 A. Yes.
Q. Tell us what he said.
A. Because he says, "You have been taken care of, and you also will be taken care of again."
Q. What did he mean when he said "You have been taken care of"?
A. I had a raise about two weeks before that, in pay.
Q. Did he say anything else at that time?
A. Yes, he says, "You can work for our union as long as you want, nobody will say a word."
Q. Did he indicate what he meant by "our union"?
A. No, but I understood him to mean the Independent Union.
Q. Aside from Mr. Green, what other employee in a supervisory or semi-supervisory capacity spoke to you about union affairs?
A. None.
Q. Were you ever approached to join the Independent Union?
A. Well, I don't know if you would call it being approached, but I had an application handed to me at my machine during working hours.
Q. By whom?
A. Joe Trost.
Q. Did you know what Joe Trost's position was with the company at that time?
A. I was under the impression he was a straw-boss.
659 I am still under that impression.
Q. Didn't Mr. Trost say anything when he gave you the application?
A. No, not a word.
Q. At the time Mr. Green made these statements to you

about the C. I. O., what effect did those statements have upon you?

A. Well, I didn't fall asleep until about 2:00 o'clock. The next day, I came to my work, and the night man handed me a whole handful of C. I. O. cards, and I started organizing, and I signed up all the boys in that department but two, the next day I signed up myself.

Q. You were not intimidated by Mr. Green's statements, were you?

A. Well, it worked on me, I couldn't fall asleep. I was thinking, "Why should somebody squawk on me when I wasn't guilty?"

Q. Did you resent that statement?

A. I don't know how to answer that.

Mr. Rissman: That's all.

Cross-Examination.

Q. (By Mr. Lamfrom.) How long after Green talked to you, as you testified, did you join the C. I. O.

A. Two days after.

Q. And you were active two days afterwards in get- 7660 ting members signed up to the C. I. O., weren't you?

A. I was active the very next day.

Q. The very next day. So, the effect of Mr. Green's statement was to sort of stimulate you into going into the C. I. O., wasn't it?

A. To a certain extent, yes.

Mr. Lamfrom: That's all.

Redirect Examination.

Q. (By Mr. Rissman.) Why did you join the C. I. O. the day after Mr. Green spoke to you?

A. Not the day after. Two days after.

Q. Or two days after.

A. I would have joined the next day, but I didn't have any more cards to sign up, I had to wait until I got some more cards.

Q. Why would you have joined the next day if you could have, the next day after Mr. Green spoke to you?

A. Because I figured that was the working man's organization to belong to.

Mr. Rissman: That's all.

Mr. Lamfrom: Just a minute, please.

Recross-Examination.

Q. (By Mr. Lamfrom.) Did Mr. Green's talk with you interfere with your freedom of choice in joining the organization that you wanted to join?

1661 A. He didn't interfere with me, but he wanted me to work for the other organization.

Q. Well, you answered my question, that he didn't interfere with you.

Had you made up your mind, prior to Mr. Green's talk with you, that you were going to join the C. I. O.?

A. No, I didn't know anything about it until he talked to me.

Q. Then you got kind of sore about it, didn't you?

A. Yes.

Q. And then you joined the C. I. O.?

A. Yes, and I would do so again.

Q. And when you joined the C. I. O., that was your free choice, wasn't it?

A. Yes.

Mr. Lamfrom: That's all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Mr. Rissman: That's all.

Trial Examiner Batten: That's all.

(Witness excused.)

Mr. Rissman: There was one other man, who is not here, who would have been my last witness.

I rest my case, with the reservation of the right to call this one other man, and I have yet to consult with Mr.

1662 Adelman, I may yet call him as a witness.

With the exception of those two, the Board will rest.

Mr. Lamfrom: I think, before we are required to proceed, if you are going to introduce Mr. Adelman's testimony, you had better introduce it.

Trial Examiner Batten: I wonder if I could see the attorneys in chambers for a moment?

Mr. Lamfrom: You certainly can.

(Whereupon, the Trial Examiner and counsel retired to chambers, and later returned to the hearing room.)

Trial Examiner Batten: The Board has rested its case, with the possible exception of one witness. If they decide to call that one witness, it will be the first thing Monday morning.

Now, in order that the Respondent and the Independent Union will have some time to prepare their case, it was the feeling of all of us that if they do have that time, some time will be saved, and you will also make up a little time the first of the week.

We will adjourn at this time until 9:00 o'clock Monday morning, instead of 9:30.

(Whereupon, at 8:05 o'clock p. m., August 20, 1937, the hearing was adjourned to 9:00 o'clock a. m., Monday, August 23, 1937.)

1666 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
(Caption—XIIC57 and XIIR85)

Room 409, Milwaukee County Courthouse,
Milwaukee, Wisconsin,
Monday, August 23rd, 1937.

The hearing was resumed, pursuant to adjournment, at 9:00 o'clock a. m.

Before:

James C. Batten, Trial Exmainer.

Appearances:

Robert R. Rissman, and

S. G. Lippman, Attorneys, on behalf of the National Labor Relations Board.

A. G. Goldberg, 511 Warner Building, Milwaukee, Wisconsin, appearing for International Union of Operating Engineers, Local No. 311.

Giles F. Clark, of Alexander, Burke & Clark, 110 East Wisconsin Street, Milwaukee, Wisconsin, appearing for Independent Union of Falk Employees.

Lamfrom, Tighe, Engelhard & Peck, by Leon B. Lamfrom, and

A. J. Engelhard, appearing for The Falk Corporation.

1667 Proceedings.

Trial Examiner Batten: Are you ready to proceed, gentlemen?

Mr. Lamfrom: We are ready.

Mr. Rissman: Mr. Meindle, will you take the stand, please.

Trial Examiner Batten: Mr. Rissman, I have a transcript for August 17th.

Mr. Rissman: I have it for August 17th, also.

Trial Examiner Batten: For the 17th?

Mr. Rissman: Yes.

Trial Examiner Batten: I wonder if you happen to go up to the office this morning, you will find out if the first day is in yet.

Mr. Rissman: That is the 17th?

Trial Examiner Batten: Yes, it was probably mailed direct.

Mr. Rissman: It was probably mailed to the office. I haven't been there this morning.

Mr. Lamfrom: We received a copy, too.

Trial Examiner Batten: Did you get them first day?

Mr. Lamfrom: I think it was the first day, yes.

LOUIS MEINDLE, was recalled as a witness by and on behalf of the National Labor Relations Board, being previously duly sworn, testified further as follows:

1668 *Direct Examination.*

Mr. Rissman: Mr. Meindle testified before, so he is being recalled.

Q. (By Mr. Rissman.) Will you state your name.

A. Louis Meindle.

Q. You are the same Louis Meindle who testified here previously?

A. I am.

Q. You are secretary of the Amalgamated Association of Iron, Steel and Tin Workers?

A. I am.

Q. Mr. Meindle, what employees of the Falk Corporation are eligible for membership in your union, Local 1528 of the Amalgamated Association of Iron, Steel and Tin Workers of North America?

A. Why, all of the employees in the plant proper, itself, excluding the office.

Q. Will you tell us what departments of the Falk Corporation are excluded?

A. Excluded?

Q. Yes.

A. The departments that are excluded would be the drafting room, the engineers, the main office and timekeeper's office.

Q. By "engineers" what kind of engineers do you refer to?

A. Drafting engineers and the engineers that are in
1669 the office.

Q. That is, technical engineers?

A. That is right.

Q. You do not refer to the powerhouse engineers?

A. No, sir.

Q. Or any of those?

A. No.

Q. Can you tell us, Mr. Meindle, how many employees of the departments from which employees are eligible have indicated that they chose the Amalgamated Association of Iron, Steel and Tin Workers of North America as their collective bargaining agency?

Mr. Lamfrom: I object to that as incompetent, irrelevant and immaterial, and not the proper evidence to prove anything with reference to the right of this union to bargain for a majority of the employees.

Mr. Clark: I further, your Honor, object on the ground that it is asking for a conclusion.

Mr. Rissman: Shall I lay the foundation?

Trial Examiner Batten: I think you had better lay more foundation than you have so far as this witness is concerned.

Mr. Rissman: All right.

Q. (By Mr. Rissman) What is your position in the union, Mr. Meindle?

1670 A. Financial secretary.

Q. What are your duties as financial secretary?

A. To keep all the records and financial statements of the lodge.

Q. And among those records do you keep a record of the number of persons who make application to the union?

A. It is my duty to take all applications and report all applications to the grand lodge at Pittsburgh.

Q. How recently did you make a computation of the number of applications you have?

A. My records were cleared up last night and the approximate number of members we now have can be given.

Q. Where do you have your records?

A. I have them at home.

Q. They are in your custody?

A. My custody.

Q. And you are acquainted with them?

A. I am.

Q. How many employees did indicate that they wished to apply for membership in your organization?

Mr. Lamfrom: That is objected to as not the proper proof, not the best evidence. The records are available and they should be produced here.

Trial Examiner Batten: Well, he can testify as to what the number is, for whatever that is worth.

1671 Q. (By Trial Examiner Batten) You have these records at home, you say, Mr. Meindle?

A. I have.

Q. Will you bring those records in to the hearing tomorrow morning?

A. I can, or I can bring them this noon.

Q. Bring them in this noon at two o'clock.

A. I can.

Q. You may state what your records show?

A. Our records show approximately 700 members.

Q. (By Mr. Rissman) Have you an opinion, Mr. Meindle, as to whether or not there are any employees at the plant—

Mr. Lamfrom: What was the last question? Pardon me, I didn't hear it.

Mr. Rissman: I haven't finished.

Mr. Lamfrom: I did not hear the question.

Mr. Rissman: I haven't finished it.

Q. (By Mr. Rissman) You have indicated that they will choose your organization but have not yet signed application cards?

Mr. Lamfrom: I object to that as incompetent, irrelevant and immaterial, and not the proper method of proof.

Trial Examiner Batten: I will sustain the objection.

Q. (By Mr. Rissman) Have you any opinion, Mr. Meindle, as to the result of a secret ballot among the em-
1672 ployees of the Falk Corporation for choice of collective bargaining agent?

Mr. Lamfrom: Just a minute. That is objected to. It is simply calling for his opinion, what I may say, a conclusion of the witness.

Trial Examiner Batten: I will sustain the objection.

Q. (By Mr. Rissman) Do you know, Mr. Meindle, if there are employees at the Falk Corporation in addition to the 700 who signed application blanks for your union, who desire to be represented by your union?

A. Yes.

Q. How do you know that?

A. I have been told by numerous fellow-workers, and also by some of the rival organizations, that if it was possible—if it was definite, they would indicate that they wanted the Amalgamated Association to represent them as their bargaining agent.

Q. If what was definite?

A. If either union was a definite organization. As this trial came up, and this trial has been in the wind now for several months, they are just standing by to see just what the

come would be, and in the meantime, neither one of them
e accepted membership in either lodge.
Q. Do you know approximately how many employees are
in that position you have just described?
A. Well, according to all the information that I had
received, and a lot of it was very reliable information, it
s from the rival organization, they said there was approx-
ately 200 to 300 fellows that haven't signed applications
either union, that if the C. I. O. won out in this fight, why,
y would accept the C. I. O. as their bargaining agent.
Mr. Rissman: That is all.
Mr. Engelhard: In the absence of the record, your Honor,
eems rather difficult to cross examine.
Trial Examiner Batten: Well, the witness has stated that
will produce—that he will have his records here at two
lock.
Mr. Lamfrom: That is all.
Mr. Clark: I should like to ask leave to examine him when
does produce his records.
Trial Examiner Batten: Well, that is entirely up to the
ness. He may produce his records; and you can ask to
mine them.
Mr. Clark: I don't understand.
Trial Examiner Batten: I say, when he produces the rec-
ls you may ask him for the privilege of examining them.
Mr. Clark: No, I would like to examine the witness in
nection with the records when he does produce them.
Trial Examiner Batten: Yes.
Mr. Engelhard: We intend to cross examine him
when he has the records here, because now it is just a
matter of guess work on his part.
Trial Examiner Batten: Well, I don't know that I would
guess work.
Mr. Engelhard: I mean the questions I would put to him,
would have to answer on approximations, rather than give
inite answers.
Trial Examiner Batten: That is all.
(Witness excused.)
Mr. Rissman: The Board rests, and we now move to
end the complaint to conform with the proof introduced so
.
Mr. Engelhard: Well, that is a rather indefinite state-
nt, to amend the complaint in conformity with the proof
roduced.

As we understand it, there are three charges here. Are there any additional charges?

Trial Examiner Batten: My understanding is there are no additional charges except those which are specified in the complaint.

Mr. Engelhard: And he makes a motion to amend the complaint. So that we may know what we have to meet by reason of any amendment to the complaint, we ought to know definitely what the amendment is.

Trial Examiner Batten: I assume his motion is to amend the complaint to conform to the proof.

1675 It is not my understanding that that motion in any way means that there are any issues or any charges against the respondent except those which are specified in the complaint,

Mr. Engelhard: In the complaint.

Trial Examiner Batten: That is my very definite understanding.

Mr. Lamfrom: If the evidence which has been introduced here by the National Labor Relations Board tends to prove the charges in the complaint, then there need be no amendment.

Trial Examiner Batten: I presume he has a perfect right to make it, if he so desires.

Mr. Lamfrom: In what respect is he amending the complaint?

Trial Examiner Batten: He hasn't amended it, as I understand—

Mr. Rissman: In instances in which the proof tends to vary from the complaint, if it does.

Mr. Lamfrom: Well, but we ought to know what it is. If it does, will you kindly point out to us in what respect it does differ, so that we know just what position we are in.

Mr. Rissman: Counsel have been present throughout the hearing and they know what the proof indicates, as well as the record itself does, and I have made my motion to amend the complaint to conform to that proof.

1676 I don't think any further designated specification is necessary.

Mr. Engelhard: May I ask counsel whether or not he takes the position that his proof has proved anything other than, or rather, has tended to sustain anything other than the charges stated in the complaint?

Mr. Rissman: The proof was intended to sustain the

harges contained in the complaint and those charges only. here may be variance of a date or some immaterial matter that respect.

Mr. Lamfrom: Well, in just what respects are you attempting to move to have the complaint amended? We must now, even if it is an amended complaint, if the Examiner lease, just what we have got to meet.

I don't know what counsel means by that.

Either his proof did or did not sustain or tend to sustain he complaint.

Trial Examiner Batten: Well, I think he just stated that in some minor respects, such as a date or something of that nd, the proof is at variance with the complaint, that it is is intention in that respect to amend the complaint, and ot as to any issues.

Mr. Rissman: Counsel intend to meet the proof submitted or should meet it by meeting all of the proof submitted, and they will meet any amendment to the complaint 677 if the proof has amended the complaint.

Mr. Lamfrom: Your understanding of an amendment the complaint is somewhat different than ours, but at least e now know that you do not intend to amend the complaint ith respect to any specific charges set forth therein.

Mr. Rissman: We don't introduce any new issues and do ot intend to delete any major issues.

Mr. Engelhard: Just so we understand then what your urpose is in making this motion.

Trial Examiner Batten: Do I understand that on the basis f that understanding of the matter that there is objection to ?

Mr. Lamfrom: Well, if counsel's purpose is simply to ake certain that if there is a variance in dates or places or he happening of events which have been shown in the testmony or the persons, any such evidenciary matters as that, hy, of course, we have no objection.

Trial Examiner Batten: Well, that is my understanding. s that right, Mr. Rissman?

Mr. Rissman: That is right.

Trial Examiner Batten: If there is no objection the motion will be allowed.

Mr. Lamfrom: Now, if the Examiner please, at this time e desire to make the following motions.

Trial Examiner Batten: Incidentally, Mr. Lamfrom, 678 you don't happen to have an extra copy of this, do you?

Mr Lamfrom: Of the motion?

Trial Examiner Batten: I thought you had them all prepared.

Mr. Lamfrom: No, these are oral motions.

Trial Examiner Batten: All right.

Mr. Lamfrom: We move to dismiss the petition for investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, which is denominated here as Case No. XII-R-85, and which was consolidated with Case No. XII-C-57.

We also move to dismiss the complaint in Case No. XII-C-57, and I will state my reasons for these motions.

It is alleged in the petition by Meyer Adelman, Field Organizer, Steel Workers Organizing Committee, that the "approximate number of employees 1600; that the description of the bargaining unit which petitioner claims is appropriate is all employees at the Milwaukee plant except supervisory employees, draftsmen, employees in the general office, and employees in the payroll department; that the number and classification of employees which representatives on whose behalf petition is filed claim to represent approximately 1400 employees at the Milwaukee plant", except those other kind of employees mentioned.

And it is further alleged in the petition that "the 1679 Independent Union of Falk Employees is a labor organization created in violation of Section 8(2) of the National Labor Relations Act."

To the first allegation we say that there is no competent proof, that the petitioner represents the number of employees alleged in the petition.

Referring to the second charge in the petition we say that there is no competent proof that the Independent Union of Falk Employees is a labor organization as stated in the petition.

As far as the complaint is concerned, the charges are that "a unit, for the purpose of collective bargaining composed of all the employees employed by the respondent at the Milwaukee plant, except supervisory employees, draftsmen, employees in the general office, and employees in the payroll department, would insure to employees of the respondent at the Milwaukee plant the full benefit of their right to self-organization and to collective bargaining and would otherwise effectuate the policies of the National Labor Relations Act and

is a unit appropriate for the purpose of collective bargaining."

We submit that there is no competent proof of that allegation.

Allegation No. 5 is to the effect that "a majority of the employees in the said unit have designated the union,"
1680 which I have described in allegation No. 4, "have designated the union as its representative for the purpose of collective bargaining with respondent, such designation having been made by signed application cards and membership in the said union."

And that "by virtue of Sectin 9(a) of said Act, the union is and has continuously been the exclusive representative of all employees in the said unit for the purpose of collective bargaining."

We say that there is no competent proof of that, and furthermore that having been alleged in paragraph 5 of the complaint, that the designation was made in a specific manner by signed application cards and membership in said union, it is incumbent upon the National Labor Relations Board to prove by affirmative proof, which they haven't done by any part of the proof which is sufficient competent evidence.

No. 6 allegation is that "at various times respondent, when requested by the union has refused to bargain collectively with the union as the exclusive bargaining agency for all of its employees as above enumerated. Said employees together constitute an appropriate bargaining unit."

There is no competent proof here, as I see it, that the Falk Corporation has so refused to bargain collectively.

The Falk Corporation refused to bargain collectively with the union—now, referring to the C. I. O. union—at the time Mr. Adelman met with Mr. Falk, on the ground that un-
1681 der the Wagner law the Falk Corporation was obligated to bargain with a majority of its employees and had recognized at that time the Independent Union of Falk Employees, upon proof indicating such fact, as the representative of a majority of all employees, all employees of the Falk Corporation, and it was so stated to the representatives of the C. I. O. union at the time.

The eighth paragraph of the complaint deals with the Anton Kinch matter, and I submit that the evidence with reference to Anton Kinch is to the effect that Anton Kinch was discharged for legal cause.

I am not going into the details here on these things, because

I do not think it is necessary. The Examiner recollects the evidence undoubtedly just as well, if not better, than I do.

The next charge is paragraph 9, that the company or "the respondent by its officers and agents, while operating as hereinbefore described, up to and including the date of the filing of the complaint, dominated, fostered, encouraged, and interfered with the formation, enlistment of membership, and administration of a labor organization of its employees known as the Independent Union of Falk Employees and did and does now contribute financial and other support thereto."

Now, I submit that the evidence shows that no such thing happened, and I submit that the evidence shows that
1682 up to the formation of the corporation known as the Independent Union of Falk Employees, there was no independent union or association of Falk Employees in the true sense of the word; that while some of the employees attempted to organize, they saw Mr. Burke, they talked about a voluntary organization and a corporate organization, and as time went on and the voluntary organization seemed to have no cohesion, they did not know how to go about it, the voluntary organization was abandoned and the corporation was formed, known as the Independent Union of Falk Employees, of which Mr. Wilson is one of the incorporators, and from that date on the real and only independent union of Falk employees came into existence and has since been in existence, and if the Examiner please, there isn't one shred, not one dot, not one iota of evidence that the Falk Corporation has in any manner interfered with, dominated, contributed financial support, or has done anything else which is in violation of the Wagner Act, which would render this organization as far as the Falk Corporation is concerned, a company union in respect to which the Falk Corporation has committed an unfair labor practice.

Trial Examiner Batten: Do I understand, Mr. Lamfrom, that your position is that no matter what might have transpired prior to the incorporation, that certainly that is not chargeable to the corporation?

Mr. Lamfrom: Oh, no, I don't take that position at all.

1683 I merely take the position, if the Examiner please, that the union came into existence, the Independent Union of Falk Employees, which is here charged to be a company organization, which the company is here charged to have fostered and dominated, and to which it is charged to have

ntributed financial support, is the so-called Independent
ion of Falk Employees that is the entity which we are
aming into today.

Trial Examiner Batten: My question was this. I rather
thered from your remarks that you took the position that
e voluntary association or group of men who organized or
arted out to organize, that if that group had done anything,
if the Falk Corporation had encouraged or fostered that
oup, that that unfair labor practice, if it exists, is not
argeable to the Independent Union of Falk Employees as a
rporation.

Mr. Lamfrom: No, I don't make that point, Mr. Examiner.
I do make this point: that if it were shown here that at the
ne or immediately prior to the time or after the time of
e incorporation of the Independent Union of Falk Em-
oyees there had been some direct or indirect interference
domination, or contribution of financial support on the
rt of the Falk Corporation, that would make a clear case
der the National Labor Relations Act of an unfair prac-
tice, but that inasmuch as the attitude of the Falk Cor-
84 poration if it is condemned by the law, what they did or
what they did not do to bring it within the purview of the
-called company union unfair practice section, if all of that
is shown here is proof of something that the company
ould not have done or something that the company should
ve done, that is merely in the nature of events which pre-
ded the formation of this institution, the Independent
ion—

Trial Examiner Batten: No—

Mr. Lamfrom: May I finish, I just want to make myself—

Trial Examiner Batten: Here is the point that I was try-
g to make: it seems to me that you are distinguishing—

Mr. Lamfrom: No, I am not, I was going to try to make
rself clear if I may.

Let us suppose on April 1st Mr. Harold Falk called in
ree employees, three of his employees and said to them,
Now, boys, I want you to form an organization, I want you
get together and get a union because the Falk Corporation
ants to treat with a union of the type mentioned of its own
ployees, and I am going to contribute one hundred dollars
the formation of that union and its development."

Clearly, there would be no doubt that if that union was
rmed on that basis it would be in violation of the act.

Now, let's say that he had—let's say on April 15th 1685 the employees who had cooperated with him on that basis absolutely abandoned that sort of organization, had nothing more to do with it, and went out and without any interference or intervening influence on the part of the Falk Corporation, between April 1st, we will say, and April 15th, by their own volition, clearly as the evidence shows and it does not show anything to the contrary here, organized another corporation on an altogether different basis, I say that the only effect that can be given to the evidence, which is primarily to treat of the preliminary events to the formation of the corporation on April 15th, the only effect that can be given to that, that it is historical as the attitude of the company and the connection between the company and the men, but is of itself no adequate and sufficient proof; in other words, it is not shown that on April 15th the organization is a company union within the definition of the Act.

Now, have I made myself clear?

Trial Examiner Batten: I understand.

Mr. Lamfrom: That is somewhat different from the idea you thought I was making here.

Now, then, the next charge is that "by all of the above said acts—"

This running to the omnibus charge, the Kinch matter so-called, the Independent Union matter and the alleged refusal to bargain with the C. I. O. union.

1686 "That by all of the above said acts and each of them, the respondent did interfere with, restrain, coerce, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them did engage in and is now engaging in unfair labor practices within the meaning of Section 8, sub-section (1) of said Act.

"The activities of respondent set forth in paragraphs 6, 7, 8, 9 and 10 above occurring in connection with the operations of respondent described in paragraphs 1 and 2 above, have a close, intimate and substantial relationship to trade, traffic and conference," and so forth.

Now, I submit that if I am right on the three charges separately that I am right that the so-called omnibus count does not state anything that is proven, as far as being backed up by the evidence that has been introduced here to sustain any complaint against the Falk Corporation.

Therefore, I shall now move that both the petition and the complaint be dismissed.

Mr. Rissman: I will oppose that motion, if the Trial Examiner please, and point out that the petition filed by the Amalgamated Association of Iron, Steel and Tin Workers does specify the number of employees the union claims to represent, it does indicate the approximate number and total
1687 employees of the Falk Corporation, and the approximate number of employees the petitioner is entitled to represent if it does have a majority.

The complaint alleges the appropriate unit for bargaining and I think with the evidence we have and the statement stipulated to in the record the Board will be able to designate what is a proper unit for the purposes of collective bargaining.

The company has failed to bargain as indicated by the proof, not so much in the testimony here, but from the transcript of the meeting between the company and union representatives.

With respect to the objections made on the case of Anton Kinch, I disagree with Mr. Lamfrom and I state that the record points out that Mr. Kinch was discharged, not for the reasons given by the company, not for violating the company's rules, but he was discharged for the reason that he sought to collectively unite with other employees for the purpose of gaining a common advantage.

Mr. Lamfrom's unique argument as to the Independent Union of Falk Employees is entirely frivolous to my mind, or in trying to distinguish between a group of men who were unorganized and who were spoken to by Mr. Falk and the corporation both, as to advice, place of meeting and other matters, and the group finally developed from that a cor-
1688 poration known as the Independent Union of Falk Employees.

We cannot draw any fine line of distinction between that group that was incorporated on April 19th, I believe, and the group who sought to create that corporation around the 12th, 13th, 14th and 15th—we cannot draw the line because there is no line to be drawn and there is no distinction.

One day it was a group of men organizing, and naturally in the course of events they had no name, and two or three days later they had a name and charter, but it is still the same group, subjected to the same influences, the same domination and the same support.

The company after the incorporation withdrew support by telling the men they would have to meet off company property, but that is the only item of any encouragement withdrawn by the company.

It was to all intents and purposes to remain the same group of men.

I submit that the Board has proven the matters alleged in the complaint, and therefore the summation of the violations of the Act that Mr. Lamfrom read in the last paragraph of the complaint are proven and the complaint should stand.

Mr. Lamfrom: May I say, Mr. Examiner, that I would like to have it appear that the motion made to dismiss the complaint is in effect also several motions to dismiss in each case each charge that I indicated in my argument.

1689 Trial Examiner Batten: You mean with respect to the paragraphs you mentioned?

Mr. Lamfrom: Yes, the respective charges, that it will be considered a series of motions directed, as far as each of those motions are concerned, to each one of the charges.

Is that agreeable to you?

Mr. Rissman: It is not agreeable to me.

Mr. Lamfrom: Well, nothing is agreeable to you. I should not have asked that. I thought maybe on Monday, having been mellowed on Sunday, something might be agreeable to you.

Mr. Rissman: I object to each and every motion individually.

Trial Examiner Batten: The Examiner denies the motion for dismissal of the petition, and denies the motion for dismissal of the complaint and reserves his opinion as to the dismissal of the separate paragraph referred to by counsel.

Mr. Lamfrom: We will proceed?

Trial Examiner Batten: Yes.

Mr. Lamfrom: I understand, Mr. Examiner, under the practice here, that an exception follows as a matter of course?

Trial Examiner Batten: That is correct.

Mr. Lamfrom: Mr. Deuchars.

1690 LAWRENCE DEUCHARS a witness called by and on behalf of the respondent, being first duly sworn, was examined, and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) What is your full name?
A. Lawrence Deuchars.
Q. You are Scotch, aren't you?
A. Yes, sir.
Q. Well now, will you talk very plainly and clearly so that we can understand you, Mr. Deuchars?
A. Yes, sir.
Q. (By Trial Examiner Batten) How do you spell your last name, Mr. Deuchars?
A. I will try for you.
Q. (By Mr. Engelhard) Are you a little bit deaf?
A. Yes, sir.
Q. Do you want me to come up there? Can you hear me all right from where you are there?
A. I hear you now, yes.
Trial Examiner Batten: How does he spell his name?
Q. (By Mr. Engelhard) How do you spell your name?
A. D-e-u-c-h-a-r-s.
Q. The first name is what?
A. Lawrence.
Q. By whom are you employed?
A. The Falk Corporation.
1691 Q. And in what capacity?
A. Foreman of erecting.
Q. How long have you been such foreman?
A. 14½ years, 14½ years.
Q. Who is your immediate superior?
A. My immediate superior is Mr. Henderson, William.
Q. What is his first name?
A. William.
Q. Is Mr. Henderson a foreman or is he superintendent?
A. Yes, he is actually superintendent of erecting.
Q. Of the erecting department?
A. Of the erecting department.
Q. What relation has Mr. Green to you?
A. Well, he is the superintendent of the machine shop, including our department, too.

Q. Is Mr. Green superior to Mr. Henderson?
A. Yes.
Q. In your department?
A. In my department, too, yes.
Q. Then as I understand it Mr. Green has a superintendent in the machine shop under him—I mean foremen in the machine shop under him?
A. Mr. Henderson is under Mr. Green.
Q. And you are under Mr. Henderson?
A. Yes.
1692 Q. Now, how old are you?
A. I am 43.
Q. Are you a married man?
A. Yes.
Q. Do you know Anton Kinch?
A. I do not get the question.
Q. I say, do you know Anton Kinch?
A. Yes, sir.
Q. How long have you known him?
A. Oh, since he was employed by the Falk Corporation, which may have been eight or nine years.
Q. That is, for any length of time that he was employed, you knew him?
A. Yes.
Q. Now, was he ever under your immediate jurisdiction, Mr. Deuchars?
A. On several occasions he was.
Q. Will you tell us how that happened that he was under your immediate jurisdiction?
A. Any time that Mr. Henderson was not at the shop, it was then that he was under my charge.
Q. Now, when he was under your immediate jurisdiction did you have occasion to observe what he did during working hours?
A. I didn't get the latter part of that question.
Mr. Engelhard: Would you read the question back
1693 to him, Mr. Reporter.
(The question was read.)
A. Oh, yes.
Q. (By Mr. Engelhard.) Did you have occasion to observe what he did while he was not working, but at the plant?
A. Not working but at the plant, no.
Q. Now, Mr. Deuchars, in the exercise of your jurisdic-

tion over Mr. Anton Kinch did you ever have occasion to reprimand him?

A. I did.

Q. You did?

A. Yes, sir.

Q. And what was the occasion for the reprimand?

Mr. Rissman: I object to the question. He may state any conversation he has had with Mr. Kinch, but the characterization of that conversation should appear from the conversation itself, and not from the question.

Trial Examiner Batten: What was the question?

(The question was read.)

The Witness: Well, I was standing by my—

Trial Examiner Batten: Just a moment.

The Witness: Pardon.

Trial Examiner Batten: I wonder, Mr. Engelhard, if you will first place the time as to this occasion that you are referring to.

1694 Q. (By Mr. Engelhard.) Will you state the time, Mr. Deuchars, when you had occasion to reprimand Mr. Kinch?

Mr. Rissman: I object to the question.

The Witness: Oh, I believe only on three occasions.

Trial Examiner Batten: The time, what year was it, and what month was it?

The Witness: That was probably the end of last year.

Q. (By Trial Examiner Batten.) When in the end of last year, December, November, or October?

A. It may have been either October or November, but I know one specific occasion was in December.

Q. When in December?

A. I couldn't tell you the exact date.

Trial Examiner Batten: All right, you may proceed, Mr. Engelhard.

Q. (By Mr. Engelhard.) Well, you stated that you had three different occasions when you had to reprimand Mr. Kinch?

A. Yes.

Q. Will you tell us what you said to Mr. Kinch?

A. Well, I don't recollect exactly what I said.

Q. Well, give us the substance of it. We realize you can't remember the exact words, but give us the substance of the conversation you had with Mr. Kinch.

A. Well, I was censored by my immediate superior, who was Mr. Green at that time.

1695 Mr. Rissman: I object and move the answer be stricken as not responsive.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Engelhard.) Well, before you answer the question I gave you, will you indicate to me how your attention was called to Mr. Kinch's activities?

Mr. Rissman: At what time?

Q. (By Mr. Engelhard.) At the plant during the months of October, November and December.

A. Well, I was having trouble in the shop.

Q. Well, were you called on the carpet by Mr. Green about the trouble in the shop?

Mr. Rissman: I object.

Mr. Engelhard: Let me finish my question and then you put in your objection.

Let's not get excited.

Mr. Rissman: I am not excited.

Mr. Engelhard: Let me finish my question and I will wait until you make your objection.

Trial Examiner Batten: Have you finished with your question?

Mr. Engelhard: Yes, I have finished the question.

Mr. Rissman: I object to the form of the question.

Trial Examiner Batten: Will you read it, please? I was listening for you to finish it; I didn't think you had fin-

1696 ished the question. Will you read the question, please, Mr. Reporter?

(The question was read.)

The Witness: Yes.

Mr. Rissman: Just a minute.

Trial Examiner Batten: What is your objection?

Mr. Rissman: It is leading and suggestive, and in improper form.

Trial Examiner Batten: Well, I think the question is rather leading but you may answer.

Mr. Lamfrom: I think he has answered, he said yes.

Mr. Rissman: He has answered.

Trial Examiner Batten: Did you answer the question, Mr. Deuchars?

The Witness: Yes.

Q. (By Mr. Engelhard.) What was the trouble in the shop that you refer to?

Mr. Rissman: I object to that question. He has not referred to any trouble in the shop.

Trial Examiner Batten: I think there again, Mr. Engelhard, if you place the time of this conversation; in other words—

Mr. Engelhard: I am not asking for any conversation right now; I am asking him about the trouble in the shop.

Trial Examiner Batten: What was the question,
1697 please; will you read it, Mr. Reporter.

(The question was read.)

Trial Examiner Batten: I will sustain the objection. There is no evidence here to show there was any trouble.

Mr. Engelhard: Well, he testified he was called on the carpet because of trouble at the shop.

Mr. Rissman: He just answered, yes, in response to your question, that he was called on the carpet by Mr. Green.

Trial Examiner Batten: He answered yes, to the question that Mr. Green did call him on the carpet.

Mr. Engelhard: Will the reporter read back that question?

(The record was re-read.)

Mr. Engelhard: He said "Yes", and now I asked him what was the trouble in the shop.

Trial Examiner Batten: Well, I still think, Mr. Engelhard, if he would repeat what Mr. Green told him, you will get the same thing because apparently it was what Mr. Green told him about the trouble, wasn't it?

Mr. Engelhard: I don't know whether it was Mr. Green who told him or whether or not he refers to trouble in the shop that caused Mr. Green to call him on the carpet; that is what I am trying to get at.

Q. (By Mr. Engelhard.) Mr. Deuchars, following the suggestion of the Trial Examiner, will you indicate what
1698 Mr. Green said to you when he called you on the carpet?

A. Well, he objected to Mr. Kinch being in different departments for one thing, and he also objected to the men standing in groups in the shop when they should be working, discussing this petition that Mr. Kinch sent around through the shop.

Mr. Rissman: May we have the date, please?

Q. (By Mr. Engelhard.) Can you fix the date of that, Mr. Deuchars?

A. Not any exact date, no.

Q. Well, can you fix it as to the month in which this occurred?

A. It was December some time.

Q. What did you do after Mr. Green talked to you about Mr. Kinch's activities?

A. Well, I discussed the petition with Mr. Kinch at some length; I think I said something to him at that time, he was rather short—I said to him that he was probably treading on dangerous ground by circulating this petition.

Q. What did Mr. Kinch say to you?

A. Pardon?

Q. Did you hear my question?

A. No.

Q. What did Mr. Kinch say to you?

A. Well, one of the things he did say to me was that he had some scheme whereby he wouldn't have to be de-
1699 pendent on the Falk Corporation for support after about two or three months, and by that he meant that he would probably be leaving their employment.

Mr. Rissman: I object and move that the last part be stricken as a conclusion.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Engelhard.) Mr. Deuchars, had—after you had talked to Mr. Kinch about circulating this petition what did Mr. Kinch do then?

A. I don't know exactly what he done, but I know the trouble in the shop still kept going on.

Q. What was this trouble in the shop that you are referring to?

A. Well, I was not getting production.

Q. Why weren't you getting production?

A. Because the men were busy employed talking about this petition, as to the merits or demerits of it.

Q. You may state whether or not you warned Mr. Kinch to stay away from your department?

Do you hear that question?

A. Yes. You mean—will you say that again?

Mr. Engelhard: Read the question back to him, Mr. Reporter.

(The question was read.)

A. I had no occasion to do that, he was in my department.

1700 Q. (By Mr. Engelhard) Had you occasion—you

may state whether or not you had warned Mr. Kinch to stay away from other departments?

A. I did not that one occasion, yes.

Q. What did you say to Mr. Kinch?

A. Well, I just talked in a friendly manner as far as I remember.

Q. What did you say to him?

A. Well, I think the question of this petition came up, I think the discussion was about this petition he had.

Q. Well, what was said between you and Mr. Kinch about the petition?

A. Oh, he argued about its merits, that was all, and I probably took the other side.

Q. Well, did you in that conversation with Mr. Kinch give him any instructions as to what he should do or he should not do?

A. Well, I think if I remember correctly, that I advised him as to the proper procedure with such a petition, something such as that.

Q. What did you advise him to do?

A. Well, I advised him to go to management with it.

Q. What did you advise him as to—as respects his attitude among the men as regards that petition?

A. Well, I think I said something about, that it was
1701 disturbing the morale of the shop.

Q. Well, did you instruct him as to whether he should continue with the petition, or discontinue with the petition?

A. I believe I did.

Q. Do you know whether you did or not?

A. Well, I had a lot of things on my mind at that time, and I don't recall particularly the exact words that were said.

Q. Well now, after you talked to Mr. Kinch the first time you may state whether or not he continued with his efforts in discussing the petition with the men?

Mr. Rissman: I object.

Trial Examiner Batten: Now, Mr. Engelhard, I will have to object to that because there is no testimony given here yet—I don't know whether he is testifying as to his first, second or third conversation.

1702 Now, your question implies that in the first conversation this man had with Mr. Kinch he told him to discontinue this practice.

Now, I don't know whether the only conversation as to this was the first one, the second one, or the third one; I haven't the faintest idea.

Mr. Engelhard: We will try to clear that up.

Mr. Rissman: Further I wish to point out that all we know about this conversation is that it occurred some time in December.

Trial Examiner Batten: I am not concerned about that; I am concerned about the three conversations and I have only heard about one.

Q. (By Mr. Engelhard) Mr. Deuchars, you have testified before that you had three conversations with Mr. Kinch. Now, is that correct?

A. Three that I know of, yes.

Q. Now, what was your first conversation with Mr. Kinch?

A. Well, I think we discussed the merit of this petition.

Mr. Rissman: May we have the time and place, please?

Q. (By Mr. Engelhard) Give us approximately the time and place when this occurred, if you don't know definitely?

A. It occurred in the shop; I don't know the date, I mean I had no occasion to put down any dates.

Mr. Rissman: Tell us what month it was.

1703 Q. (By Mr. Engelhard.) Do you know what month it was?

A. I know it was December, because I was in charge of the shop at that particular date.

Q. Did all three conversations you referred to occur in December, in the month of December?

A. I think so, yes.

Q. Now, what was your second conversation with Mr. Kinch?

A. Well, it was after the time I was censured by the superintendent for his being in a different department.

Q. What did you say to Mr. Kinch in your second conversation, and what did he say to you?

A. Well, I don't recollect exactly what we said.

Q. Then you said you had a third conversation with Mr. Kinch.

A. Yes.

Q. What did he say and what did you say in that third conversation?

A. Well, it happened that one of the men came to me one

day and said that another guy in the shop had threatened him because he didn't sign this petition.

Mr. Rissman: I object to that question.

The Witness: (Continuing.) And I—

Mr. Rissman: Just a minute.

Trial Examiner Batten: Let him finish.

Mr. Rissman: I am sorry, I thought he was finished.

1704 Go ahead.

Q. (By Mr. Engelhard.) Go ahead with your testimony.

A. Well, they threatened each other with a fist fight, they were going to fight. So I think at that time Mr. Kinch and I talked.

Mr. Rissman: I move the answer be stricken as being second-hand and third-hand hearsay. He is unable to recall the date of the conversation, the men with whom he had it, or who was involved.

Trial Examiner Batten: Mr. Engelhard, I wonder if you will ask the witness if Kinch was present at this disturbance.

Q. (By Mr. Engelhard.) Well, was Mr. Kinch present—

Trial Examiner Batten: I understand he said they threatened to fight.

Q. (By Trial Examiner Batten.) Was Mr. Kinch present at this time where you thought they were going to fight, was Mr. Kinch himself present?

A. He was in the shop.

Q. Was he there where the disturbance took place, where you thought there was going to be an argument, was Mr. Kinch there?

A. No, but the argument was about him.

Q. Yes, but Mr. Kinch was not there?

A. No, he was not there.

Trial Examiner Batten: The answer may stand.

1705 Q. (By Mr. Engelhard.) What did you say to Mr. Kinch after this other man had talked to you?

A. As I said before, Mr. Kinch and I were always on friendly terms, we discussed any matter at all. Whatever I may have said, exactly I don't know; I just talked to him in general, that was all, in the shop.

Q. Well, after Mr. Green talked to you about Mr. Kinch, what did you do? When you talked to Mr. Kinch, did you tell him what Mr. Green had said?

A. I did tell him what Mr. Green had said.

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Q. Did you give Mr. Kinch any instructions as to what he should do in the future?

A. Yes.

Q. What was—what were those instructions that you gave Mr. Kinch?

A. Well, in a general way it would be the usual talk that I give to anybody when they disobey orders.

Q. What did you say to Mr. Kinch? Tell us what you said to him.

A. Well, as I said before, I don't remember the exact conversation.

Q. Well, what was the substance of the conversation?

A. Well, the substance was that he should obey the shop rules.

Q. Did he follow those instructions?

1706 A. Well, he may have after that.

Q. Do you know whether he did?

A. Pardon?

Q. Do you know whether he did?

A. As I said before, the trouble still went on in the shop.

Q. And by that trouble you mean that there was a falling off in production?

A. Yes.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) You said, Mr. Deuchars, that you were Mr. Kinch's superior whenever Mr. Henderson was absent.

A. Yes.

Q. Was Mr. Henderson absent in the month of October 1936?

A. October?

Q. Yes.

A. I could not say that.

Q. Was he absent in the month of November, 1936?

A. For about a week, yes.

Q. Was he absent in the month of December, 1936?

A. Yes.

Q. For how long?

A. For about two weeks I think.

Q. Now, all of the conversations that you had with Mr.

Kinch was after Mr. Green talked—was after Mr. Green
1707 called you on the carpet?

Oh, no.

Q. Was there any conversation with him before you were called on the carpet?

A. There was conversation.

Q. What was that conversation with him?

A. Well, it was relative to the different shop problems as affected him and affected me.

Q. Well, on those occasions, did you have—was it necessary for you to know the things he was doing outside of his regular work for, or were they just ordinary discussions about problems in the shop?

A. Just ordinary discussions, yes, sir.

Q. You testified that in discussing the petition with Mr. Kinch you told him he was treading on dangerous ground by circulating the petition.

A. Yes.

Q. Do you recall that testimony?

A Yes, sir.

Q. What did you mean by that, Mr. Deuchars?

A. Well, Mr. Kinch, when he was hired in the shop, he knew the rules and regulations of the shop, and he knew when he circulated that petition that he was breaking those rules.

Q. He was a member of the Works Council, wasn't he?

A. Yes.

1708 Q. And as a member of the Works Council it was necessary for him to talk to the employees, wasn't it?

A. Well, in that capacity, yes, sir.

Q. What rule of the shop was he breaking when he circulated the petition?

A. All over the machine shop as far as I know.

Q. What rule of the shop was being broken?

A. Pardon?

Q. What shop rule was being broken by the circulation of the petition?

A. Well, the fact that it was circulated during work hours was breaking the rules.

Q. Is there a rule in the shop that no petitions can be circulated during work hours?

A. I guess there is.

Q. Well, is there?

A. Yes.

Q. Is it posted on the wall?
A. No, it is not posted on the wall.
Q. Did you ever tell Mr. Kinch that?
A. Yes, sir.
Q. When did you tell him that?
A. Well, as I say, I ain't acquainted with the dates at all.
Q. Did you tell him before or after you saw the petition going around?
1709 A. After.
Q. So before the petition went around you never told Mr. Kinch that there was a rule that prohibits that, did you?
A. Yes, that was the gist of my conversation.
Q. I say, before that conversation you never told him it was against the rules to circulate a petition?
A. No, I can't say that I did.
Q. Does the company publish its rules in a little booklet?
A. Our rules of employment are explained to a man when he starts in the place first.
Q. Do you know if the rules were ever explained to Mr. Kinch?
A. I don't just quite get that question.
Mr. Rissman: Will you read the question please?
(The question was read.)
The Witness: No, I don't.
Q. (By Mr. Rissman) When Mr. Green called you on the carpet, tell us just what he said about Mr. Kinch's petition?
A. Oh, I don't think he knew about the petition at that time.
Q. What did he call you on the carpet for?
A. There was a petition, and Mr. Green called me on the carpet for Mr. Kinch being in a different department from where he was supposed to work.
Q. When you say Mr. Kinch was circulating a petition, what do you mean?
1710 A. Well, he went around and personally solicited the different men in the shop.
Q. Did you see him do that?
A. Yes.
Q. When did you see him do that?
A. Some time in December.
Q. In December you saw him circulating a petition. Was it the beginning of the month or the end of the month?
A. Oh, I don't know; I don't really know, I couldn't give you a definite date on it.

Q. What time of day did you see him circulating it?
A. Oh, it happened on several occasions.
Q. What time of day on any occasion?
A. In the forenoon and afternoon.
Q. Pardon?
A. I would say it was in the forenoon and afternoon.
Q. Do you know if it was before Mr. Kinch was supposed to come to work or after he was supposed to come to work?
A. It was during working hours.
Q. During his working hours?
A. Yes.
Mr. Lamfrom: I don't think the reporter got your answer. You just shook your head.
Trial Examiner Batten: You will have to speak out.
The Witness: This is the second time I have been in
1711 court.
Trial Examiner Batten: I am saying so because the reporter cannot get your answer when you shake your head, when you shake your head the reporter can't get it.
Mr. Lamfrom: You will have to speak out.
Mr. Engelhard: Will you read the last question and answer?
(The record was read.)
Trial Examiner Batten: Now, in order to clear up a matter with respect to Mr. Lamfrom's motion, as I understand the separate motions, Mr. Lamfrom, you first move to dismiss the charges in the complaint as to the appropriate unit, as stated in the complaint.
Mr. Lamfrom: Correct.
Trial Examiner Batten: And secondly, you ask for a dismissal as to the allegations in the complaint of a majority.
Mr. Lamfrom: Correct.
Trial Examiner Batten: And third, you move to dismiss that part of the complaint which refers to the refusal of the respondent to bargain.
Mr. Lamfrom: Correct.
Trial Examiner Batten: And fourth, you move to dismiss with respect to the charges in the complaint as to Anton Kinch.
1712 Mr. Lamfrom: Correct.
Trial Examiner Batten: And fourth, you move to dismiss—
Mr. Lamfrom: Isn't that fifth?
Trial Examiner Batten: Or fifth, you move to dismiss as

to that part of the complaint which refers to the domination and so forth of the corporation with respect to the Independent Union of Falk Employees.

Mr. Lamfrom: Corrrect as to that one.

Trial Examiner Batten: And sixth, you move to dismiss as to the—or sixth, rather, you move to dismiss as to paragraph 12 which refers to all the unfair labor practices under Section 8, Subdivisions 1, 2, 3 and 5, as it affects commerce.

Mr. Lamfrom: Well, the last motion, Motion No. 6, I think it is, also includes the allegations in paragraph 10, "by all of the above said acts, and each of them."

Trial Examiner Batten: That would include then paragraphs 10, 11 and 12, those are the commerce paragraphs.

Mr. Lamfrom: Yes, that is right.

Trial Examiner Batten: Now, as I understand it that covers the six separate motions referred to in your motion to dismiss.

Mr. Lamfrom: There are really eight motions. The first one was to dismiss the petition, and the second one to dismiss the complaint, and the third one was to dismiss the spe-
1713 cific charges in the complaint covered by the six separate motions.

Is that clear?

Trial Examiner Batten: Yes. I just wanted to be sure that I understood it, so that we didn't find ourselves at the finish here with some motions undisposed of.

You need not put this in the record:

(Discussion outside the record.)

Trial Examiner Batten: All right, let's proceed.

Mr. Rissman: May I have the last question and answer read please?

(The record was again read.)

Q. (By Mr. Rissman) You have testified, Mr. Deuchars, that the trouble in the shop was—the trouble in the shop was that you were not getting the production.

A. Yes.

Q. Is that right?

A. Yes.

Q. How do you know that? Did you keep any production records?

A. Sure, that is a part of my duties.

Q. What production records did you find were falling off?

A. Well, I would say that it fell off at least 20 per cent, off of usual.

Q. What investigation did you make to find out the cause of the falling off in production?

1714 A. Well, I butted in the different conversations in the shop that the boys were having, and I knew that they were discussing this petition.

Q. One of the reasons for the falling off of production was the conversations the men were having?

A. Yes, instead of working.

Q. Were there any other reasons for the falling off of production?

A. Well, because there was dissension in the shop, lack of harmony.

Q. Dissension among the men?

A. Among the men.

Q. This was in the month of December?

A. Correct.

Q. And you discussed with Mr. Kinch the merits and demerits of his plan?

A. Yes.

Q. And you said you took the other side of it.

A. I did, on the grounds that I thought it was—

Q. Did you ever discuss—

Mr. Lamfrom: Let him finish.

Q. (By Mr. Rissman) Finish your answer.

A. What?

Q. Finish your answer.

1715 A. I did, on the grounds that it was against the rules of the shop.

Q. Did you ever discuss the merits and demerits of the plan with Mr. Green?

A. No.

Q. Or with Mr. Henderson?

A. No.

Q. Just with Mr. Kinch.

A. Mr. Kinch.

Q. What merits or demerits of the plan were against the shop rules?

A. Well, the actual circulation of the petition was against the shop rules.

Q. What merits or demerits of the plan itself were against the shop rules?

A. Well, the method of his plan, to change the method of rates per hour.

Q. How was that against the shop rules?

A. Because we have a set of stated rules of our own.

Q. What plant rule did the merits or demerits of the plan violate?

A. Well, it violated the method of—it violated the method that we have employed for figuring a guy's work.

Q. How did it violate the method?

A. Because his plan was that he should have something to do with the setting of a man's rate, and the inspector
1716 should be one of the three that was supposed to set a particular man's rate per hour.

Q. And that part of the plan was objectionable to the company's rules and methods, is that right?

A. What?

Q. That part of the plan was objectionable to the company's methods.

A. In my opinion, yes.

Q. How long have you been an assistant foreman, Mr. Deuchars?

A. About seven years.

Q. And in that seven years can you recall if you ever had talked to any employees about circulating petitions in the plant?

A. We never had that experience before.

Q. Wasn't it ever necessary for you to and did you ever tell any employee that it was against the rules to circulate a petition?

A. I never had occasion to until this time.

Q. When did you first learn that it was against the rules?

A. I knew the rules as explained to me when I started there.

Q. Who explained them to you?

A. I can't explain them in detail.

Q. Who explained them to you?

A. The foreman who hired me.

1717 Q. And what did he say were the rules?

A. You mean pertaining to the—

Q. Pertaining to the plant.

A. Well, he explained the safety rules, and he explained how I should conduct myself in the shop.

Q. What did he explain about how you should conduct yourself in the shop?

A. Well, I don't know exactly how to answer that. I mean, as I said before, explained the regulations.

Q. Do you recall any of the regulations he explained to you?

A. One of them was that he had to have discipline in the shop.

Q. What else did he explain to you?

A. I don't recall what the others were.

Q. Are you acquainted with the constitution of the Works Council?

A. I never had anything to do with the Works Council.

Q. Are you acquainted with any of its rules and regulations?

A. I have read them over.

Q. Before this petition of Mr. Kinch, did you ever see any petition circulated in the shop at all?

A. Not to my knowledge.

Q. Did you ever see any petition circulated for the nomination of officers of the Works Council?

1718 A. I have seen notices on the bulletin board.

Q. Have you ever seen any petition circulated in the shop in conection with the Works Council?

A. No.

Q. Do you know whether or not the members of the Works Council had any right to circulate petitions?

A. I don't think they did.

Q. Do you know?

A. I don't know.

Q. If the rules of the Works Council say that they have, that would be contrary to your knowledge, wouldn't it?

A I suppose.

Q. You did not hire Mr. Kinch, did you?

A. No.

Q. Do you know who hired him?

A. Mr. Henderson did I think; In fact, I know he did.

Q. Do you know if Mr. Henderson ever told Mr. Kinch it was against the rules of the shop for a member of the Works Council to circulate a petition?

A. I could not say.

Q. You never told Mr. Kinch that, did you?

A. What?

Q. You never told Mr. Kinch before Mr. Green called you on the carpet that it was against the rules of the company to circulate a petition?

1719 A. I did.

Q. Before Mr. Green called you on the carpet?

A. Yes.

Q. How long before?

A. I don't really know; it may have been a week or two weeks.

Q. Did you ever tell Mr. Kinch that before you saw the petition going around?

A. No.

Q. How long before December did you notice that there was trouble in the shop?

A. Oh, I would say a month before.

Q. What did you do about it?

A. Well, I reported it to my superior.

Q. What did you report to him?

A. I reported to Mr. Green I wasn't getting the production, it was starting to fall off.

Q. Did you tell him why,?

A. I told him why?

Q. What did Mr. Green say?

A. Well, we tried to eliminate the source.

Q. Did Mr. Green say that?

A. No, I tried to find out myself.

Q. What did Mr. Green say?

A. Well, he told me to keep a closer watch of the men.

1720 Q. About how many men would you say were engaged in discussing these plans and petitions?

A. About 60.

Q. Were there any others discharged?

A. No. That last question you asked, you asked how many were engaged in the actual circulation, was that the question?

Q. You answered the question.

Mr. Lamfrom: The witness being doubtful as to the question, suppose the question be repeated to him.

Mr. Rissman: He can have it read.

Mr. Lamfrom: Will the reporter repeat the question?

(The question was read.)

Q. (By Mr. Rissman) Is that the way you understood the question before?

A. I didn't understand the question.

Q. Well, I will ask you again, how many men were engaged in discussing these plans and petition?

A. I would say the whole shop.

Q. Well, when you said about 60, what did you have reference to?

A. Well, that was about the number of men we have in the shop.

Q. When you say the whole shop, you are limiting it to the Erecting Department?

A. Yes, they discussed it pro and con.

1721 Q. When you say the whole shop, you mean about sixty employees?

A. Yes, sir.

Q. You don't mean all of the employees employed at The Falk Corporation?

A. No, just in our immediate department.

Q. How many men were engaged in circulating these petitions, do you know?

A. Well, to the best of my knowledge there were four.

Q. Were any of the others discharged or fired?

A. No, one of them quit.

Q. Well, were any of them discharged?

A. No, none of them discharged.

Mr. Rissman: That is all.

Redirect Examination.

Q. (By Mr. Engelhard) Who were the four men who were circulating petitions?

Did you hear that question, did you hear my question?

The Witness: I didn't get that.

Mr. Engelhard: Will the reporter read the question, please.

(The question was read).

A. Mr. Kinch was one, Mr. Ritchie, Mr. Gruett—

Mr. Rissman: Who?

The Witness: Mr. Gruett, and there was a Mr. Feilbach.

1722 Q. (By Mr. Engelhard) Were those men in your department?

A. Yes, sir.

Q. How often did you see Mr. Kinch circulating the petition?

A. I didn't quite get that question.

Q. How often did you see Mr. Kinch circulating the petition?

A. I would say about three times.

Q. What did he do when he circulated the petition?

A. Well, I told him to stay on his job.

Q. Mr. Deuchars, did you hear my question?

A. I didn't get it exactly, no.

Mr. Engelhard: Will the reporter please read the question?

(The question was read.)

A. Well, he went and solicited various men in the shop to get their signatures to the petition.

Q. (By Mr. Engelhard) Did he have the petition in his hand?

A. Yes.

Q. What did he do?

A. Well, he went and talked with various individuals and asked them to sign their name if they were in favor of it.

Q. You said you saw him do that three times.

A. Yes, sir.

Q. That was during working hours.

A. Yes.

1723 Q. Whose working hours?

A. His regular working hours.

Q. How about the men?

A. Their working hours too.

Q. Were these three occasions—were the three occasions when you saw Mr. Kinch circulating the petition before or after Mr. Green talked to you?

A. I believe one of the times, it was before Mr. Green talked to me.

Q. And the other two were after?

A. Yes.

Q. What did you do about it?

A. Well, I told him to stay on the job.

Q. To whom did you say that?

A. Mr. Kinch.

Q. And did he thereafter?

A. He did not.

Q. Did you speak to him again?

A. I believe I did, yes.

Q. What did he say when you told him to stay on the job?

A. Well, he argued about the merits—he figured he was justified in doing it.

Mr. Engelhard: That is all.

Recross Examination.

Q. (By Mr. Rissman) Mr. Deuchars, did you ever

1724 see Mr. Ritchie, Mr. Gruett, and Mr. Feilbach circulating petitions?

A. Yes.

Q. What were they doing? What did you see them doing?

A. Well, they were getting two or three fellows together and talking it over.

Q. Were they walking around with the petition in their hands?
A. Yes.
Q. What did you see them do?
A. In the shop.
Q. What did you see them do?
A. Well, I saw them standing in groups.
Q. They were doing about the same thing that Mr. Kinch was doing?
A. Yes.
Q. You say that you saw Mr. Kinch go to the men with this petition?
A. Yes.
Q. And do you know what conversation took place between them?
A. I wasn't in the conversation.
Q. You never heard him, did you?
A. No.
Q. Why did you say he asked them to sign their names?
A. Because I saw them signing their names.
1725 Q. Do you know if he asked them to sign it or if they asked him if they could sign it?
A. That I don't know.
Q. Who were some of the people you saw do that?
A. Well, I saw Mr. Schultz and Mr. Simpson.
Q. Did you ever talk to Mr. Schultz about it after that?
A. I don't know.
Q. Did you ever talk to Mr. Simpson about it?
A. No.
Q. Did you—did they ever talk to you about it?
A. No.
Q. Will you answer louder, so that the reporter can get it, please? Speak your answers right out.
Did you ever see anybody else?
A. No, I can't say I did.
Q. You said you saw Mr. Kinch do that three times?
A. Yes.
Q. Was it all on the same day?
A. No.
Q. Three different days?
A. Yes, sir.
Q. When did you see him talking to Mr. Schultz?
A. I can't recollect the day it was at all.
Q. But one of the days you saw him talking to Mr. Schultz?
A. Yes.

1726 Q. Where was that conversation?
A. I didn't get that.
Q. Where did you see Mr. Kinch talking to Mr. Schultz?
A. In the shop.
Q. In the shop?
A. Yes.
Q. What time of day was it?
A. Before noon.
Q. Pardon?
A. Before noon.
Q. Where were they, at Mr. Kinch's bench or machine?
A. At Schultz' bench.
Q. At Mr. Schultz' bench?
A. Yes.
Q. What kind of work did Mr. Schultz do?
A. Well, he prepares the units for the assembly floor.
Q. How far away is Mr. Schultz' place of work from Mr. Kinch's?
A. About 30 or 40 yards.
Q. Did you go to Mr. Schultz and Mr. Kinch and talk to them at that time?
A. No.
Q. Why not? Did you hear the last question?
A. No, I didn't.
Mr. Rissman: Will you read the question please.
1727 (The question was read.)
The Witness: No, I didn't.
Q. (By Mr. Rissman) But they were violating the rules of the company, weren't they?
A. Yes.
Q. And you didn't talk to them about it?
A. I happened to be busy at the time, and I didn't.
Q. How did you happen to see them?
A. Because I was down in that part of the shop.
Q. Did you speak to Mr. Schultz about it after that?
A. No, I didn't.
Q. Do you know where Mr. Kinch's tool drawer is or was?
A. Yes.
Q. Where was his tool drawer?
A. In the middle of the shop.
Q. And how far was his tool drawer from this place where you saw the conversation between him and Mr. Schultz?
A. Well, I would say it was about 20 or 30 yards.
Q. From where the conversation was?
A. Yes.

Q. How long was Mr. Schultz talking to Mr. Kinch?
A. Oh, about 15 minutes.
Q. Pardon?
A. About 15 minutes.
Q. You saw them the entire time?
1728 A. I saw them the entire time that day.
Q. During the entire fifteen minutes you didn't go over and tell them to go back to work?
A. Not on that particular occasion.
Q. Well, when did you tell them?
A. I had to reason to butt into another conversation had—
Q. We are talking about this one day when you saw Mr. Schultz and Mr. Kinch.
Mr. Lamfrom: You are asking why he didn't and he was explaining to you why he didn't. Won't you let him finish that?
You were saying something that you had butted into another conversation. Finish that, will you?
The Witness: Will you repeat the question?
Mr. Rissman: Read the question please.
(The question was read.)
Q. (By Mr. Rissman) A conversation between Mr. Kinch and Mr. Schultz?
A. No, a conversation between Mr. Kinch and Mr. Lund.
Q. At this time when Mr. Kinch was talking to Mr. Schultz—
A. Yes.
Q. —you did not talk to the two men and tell them—
A. No, this was a different occasion, I am talking about now.
Q. Did Mr. Kinch ever work with Mr. Schultz?
1729 A. Not at that time, no.
Q. Did he ever work with him?
A. He did, yes.
Q. How did he work with him?
A. Oh, when he first started with the company.
Q. When was the last time he worked with Mr. Schultz?
A. Oh, about a year and a half ago, maybe two years ago.
Q. How long before this time that you saw them?
A. I couldn't say.
Q. Do you know where Mr. Schultz kept his tool box or tool drawer?
A. Yes.
Q. Where was that with respect to Mr. Kinch's tool drawer?

A. It may have been at the same bench.
Q. You know it was.
A. What?
Q. You know it was—you know that both the tool drawers were in the same bench, don't you?
A. No, I don't.
Q. Where was Mr. Schultz' tool drawer?
A. I didn't get that.
Mr. Bissman: Will you read the question please.
(The question was read.)
A. Well, I don't know the exact location of it; it was bound to be over where he was working, but the exact location, I
1730 don't just know.
Q. You say it may be at the same bench with Mr. Kinch?
A. It may be, yes.
Q. You have testified that when you spoke to Mr. Kinch about it he told you that he was justified in circulating the petition.
A. Yes.
Q. You recall that?
A. Yes, he figured he was justified.
Q. Can you tell us what he did when he told you that, the reasons he gave you?
A. I couldn't say exactly what he said.
Q. In substance.
A. Just the substance of what he said—
Q. What was the substance of it?
A. Well, the substance was that he intended to change the wage rates of the shop.
Q. Didn't he in substance tell you he felt he had a right to do these things, to have these petitions circulated because he was a member of the Works Council and had to contact the men?
A. I believe he did,—I believe he had the right to contact the men, but not to do so like he was, he wasn't supposed to do it in working hours.
Q. Didn't Mr. Kinch tell you that he believed he was justified in having this petition circulated because it was
1731 one of his duties as a member of the Works Council? Wasn't that in substance what he told you?
A. I didn't understand it that way, no.
Q. What did you understand?
A. I thought it was just his own pet idea.
Q. What were the reasons he gave when he said he was justified in doing it?

A. Well, he said that he spent a lot of time figuring this thing out, and he probably figured himself he was doing the work.

Mr. Rissman: I move the last part of the answer be stricken out.

Trial Examiner Batten: It may stand. I think there are a lot of other things in there that are not particularly important.

Q. (By Mr. Rissman) Do you know if at this time you had the conversation with Mr. Kinch, whether or not he had spoken to Mr. Falk about this petition, or plan?

A. As far as I understand from his conversation, Mr. Falk informed him that he should have come to the management with the petition—with the idea before it became a petition at all; I mean before it was circulated in the shop.

Q. So you knew that Mr. Falk had discussed this idea with Mr. Kinch?

1732 A. I think I did.

Mr. Rissman: That is all.

Mr. Lamfrom: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Engelhard: There is just one question I want to ask Mr. Deuchars. It is not necessary for him to take the stand for that; and that is: When Mr. Kinch had the conversation with Mr. Schultz, did he have a petition with him?

Mr. Deuchars: Yes.

Mr. Engelhard: That is all.

Trial Examiner Batten: All right.

Mr. Engelhard: Mr. Ramsey.

JAMES HOWE RAMSAY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) What is your full name, please, Mr. Ramsay?

A. James Howe Ramsay.

Q. And how old are you?

A. 33.

Q. By whom are you employed?
1733 A. By the Falk Corporation.
Q. How long have you been employed by the Falk Corporation?
A. About two years.
Q. Prior to your employment by the Falk Corporation, where were you employed?
A. Pabst Brewery.
Q. And in what capacity were you employed at the Pabst Brewery?
A. I was working in the bottle house.
Q. When you became employed by The Falk Corporation, what was your work as a beginner?
A. I was working in the erecting department as a machinist.
Q. In the erecting department?
A. Yes.
Q. Where had you learned your machinist trade?
A. In Scotland.
Q. How long have you been in America?
A. I came here in 1927.
Q. How many years apprentice did you serve as a machinist?
A. I served five years as an apprentice and one year as an improver, six years all together.
Q. (By Trial Examiner Batten) Are you a citizen of the United States?
A. No, I am not.
Q. (By Mr. Engelhard) You say five years as an ap-
1734 prentice and one year as what?
A. Improver?
Q. How?
A. Improver.
Q. Is that the term you use in Scotland before they used machinists?
A. That is before you are considered a journeyman, you work one year; you serve five years as an apprentice, before you can serve as a journeyman.
Q. So that you must have six years experience and training before you can become a journeyman in Scotland.
A. Yes, sir.
Q. And you had five years work as an apprentice?
A. Yes, sir.
Q. But you did not put in the one year as improver?
A. Oh, yes, I put in that year.

Q. How many years did you work at the machinist trade after you put in the one year as improver?

A. Well, I worked right up until I came here in 1927; I guess I worked about 14 years all together in the trade, probably more.

Q. That included your apprenticeship?

A. Yes.

Q. About 14 years.

A. Yes.

1735 Q. I take it then that you became an employee of the Falk Corporation in 1935.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. About what month of that year?

A. Well, it was after Labor Day.

Q. September 1935?

A. About that, I am not quite sure, I couldn't be specific about the time.

Q. I assume that your employment with the Pabst Brewing Company was merely temporary employment?

A. It was.

Q. Until you could get a job.

A. At my trade.

Q. In your trade.

A. Yes.

Q. Now, when you were working for the Falk Corporation since September 1935 had you been working in the erecting exclusively?

A. Yes, sir.

Q. What was the nature of your work?

A. Well, I build or assemble a reduction unit, speed reducer, they call it.

Q. And after they are assembled and set up where the purchaser wants them set up, do you service them?

1736 A. Sometimes I do, occasionally I go out on the job.

Q. You had occasion just the other day to go to Chicago?

A. Yes, sir.

Q. To service one of these.

A. I was down there for two weeks.

Q. You watch them run?

A. Yes.

Q. That is, you watched them run?

A. Yes, I did.

Q. And if there is any adjustment that needs to be done, you do it?

A. Yes, sir.

Trial Examiner Batten: Mr. Engelhard, I am wondering from your line of questioning, do you want to qualify this man as an expert?

Mr. Engelhard: No, I am trying to get what his type of work is.

Trial Examiner Batten: I thought perhaps you were qualifying him as an expert.

Mr. Engelhard: No, I am not qualifying him as an expert.

Trial Examiner Batten: All right.

Q. (By Mr. Engelhard) Mr. Ramsay, during the time you were working at the Falk Corporation, had you any occasion to contact Mr. Kinch?

1737 A. Yes.

Q. In connection with what?

A. Well, not in connection with anything in particular, everything in general. I spoke to the man because I liked him as a man.

Q. Did he contact you from time to time?

A. Oh, yes.

Q. When?

A. Well, any time during the day, if I passed by his bench I would say, "Hello, Tony," or maybe ask him the time of the day or anything like that.

Q. Did you ever have any occasion to discuss with him a petition?

A. Yes.

Q. When was that?

A. I think it was in the latter part of November.

Q. And where was it that you had the discussion?

A. In the shop.

Q. And at what time, before or after working hours or during working hours?

A. It was during working hours when I spoke to him.

Q. And how did the occasion arise for you to talk with Mr. Kinch about the petition?

A. Well, one of the guys in the shop asked me why I didn't sign the petition, and I told him that judging from the conversation in the shop that my views [redacted] coincide

1738 with the views of the petition.

Q. Well, that was the conversation you had with someone else. I am asking you what conversation you had with Mr. Kinch about the petition?

A. Well, just the same thing; I told him I didn't sign the petition because I didn't think it was a proper set-up; I didn't like the idea that the—some of the ideas that he has specified in the petition.

Q. Where was this conversation—where were you and Mr. Kinch at the time you had this conversation about the petition?

A. At Mr. Kinch's bench.

Q. Had you gone over to his bench to talk to him about the petition?

A. I was passing by there and I spoke to him about it, yes.

Q. Well, did you volunteer to speak to him, or did he ask you to speak to him?

A. I volunteered to talk to him.

Q. At that time did you sign the petition or did you refuse to sign the petition?

A. I refused to sign the petition.

Q. Then what happened thereafter?

A. Well, that fellow that asked me to sign the petition started swearing and calling me names and I invited him outside to fight.

1739 Q. Who was this man?

A. Bob Ritchie.

Q. Do you know whether or not he was circulating that petition also?

A. No, I couldn't say, he was speaking to me about it, but I don't know whether he was actually circulating it or not.

Q. Who was Bob Ritchie, a fellow worker?

Mr. Rissman: May I have the last question and answer read please?

(The record was read.)

Q. (By Mr. Engelhard) Where did this conversation that you and Mr. Ritchie had take place?

A. It took place practically at the door of the stock room.

Q. Was he a fellow worker of yours?

A. Yes, he was.

Q. In that same department?

A. Yes.

Q. Were you workers together?

A. No, we worked on the same type of job, but not together.

Q. Now, Mr. Ramsay, will you tell us what effect the discussion about the petition had upon the work in the department?

Mr. Rissman: I object to that question as calling for
1740 a conclusion.

Trial Examiner Batten: Well, I don't believe this witness—you are not a foreman, are you? You haven't anything to do with the supervision of the men?

The Witness: Absolutely not.

Trial Examiner Batten: Well, I will sustain the objection. I don't think he is qualified to tell what effect it has on production; he is not responsible for the production.

Mr. Engelhard: No, I said what effect it had upon the men, not production.

Mr. Rissman: I object to that question also, if the Examiner please.

Trial Examiner Batten: I will sustain the objection. He may testify if he knows what was going on in the shop. I don't think he is qualified—

Mr. Engelhard: Well, then, I will put it that way to him.

Q. (By Mr. Engelhard) Mr. Ramsay, what was going on in the shop, particularly around you, your place of work?

A. Well, the fellows were discussing the petition that Mr. Kinch had brought up for the men to sign; they were discussing its merits and demerits, that Mr. Deuchars spoke about, and they were talking quite extensively about it on numerous days.

Q. And at what time of the day?

1741 A. All day, both morning and afternoon, and at lunch.

Q. (By Trial Examiner Batten) Did you spend quite a bit of time talking about the petition?

A. No, I didn't.

Q. Well, how many men did?

A. Well, I couldn't be specific about that.

Q. Was it only the men or Mr. Kinch and several men?

A. They wasn't talking to Mr. Kinch at all.

Q. I say, were there several men talking in the plant?

A. Yes, there were.

Q. Spending a lot of time talking?

A. They were talking about Mr. Kinch's petition.

Q. Was the foreman present?

A. I don't know whether he was or not.

Q. Did you ever see him present when the men were talking?

A. He must have been present, he was supposed to be in the shop all day.

Q. Well, that was so obvious there that the foreman should
e it.
A. Absolutely.
Q. He couldn't help but see it.
A. I would see it if I was the foreman.
Q. (By Mr. Engelhard) Will you go on and tell us what
e men did.
A. Well, Mr. Kinch had a petition in his tool box or
drawer, either a tool box or a drawer, and the boys
42 signed it, some of them went up and signed.
I spoke to Mr. Kinch about it and he knew that my
ews did not coincide with the petition; he had talked to me
lunch time about it, we spoke about the petition at lunch
me, and still I didn't sign it.
Q. Well, now, how many days would you say this discus-
on went on in the plant?
A. Well, it must have—
Q. About how long?
A. It must have went on for two or three weeks anyhow.
Q. Were there any hard feelings between the men?
A. Well, there were some hard feelings toward me because
was, I think I was the only man that didn't sign the petition.
Q. Now, why didn't you sign the petition?
A. Well, I will tell you, I didn't think it was right to sign
e petition that didn't give any protection to the man that
s served as an apprentice, as a mechanic, when he started
the business and worked there for seven years before he
uld be classed as an A-1 mechanic, and I feel that an ap-
entice could start in there and probably get around 30 cents
hour to start with, and they could bring a fellow in from
y place as a helper and he will give—he will get 50 cents an
ur and he will learn the job himself in a period of five or six
years and he will be classified as a mechanic as well as
43 can an apprentice.
Q. And you had your apprenticeship and had put in
years as a machinist in the plant?
A. Yes, sir.
Q. In Scotland.
A. Yes.
Q. And in this company, you had worked for the Falk
rporation barely a year, a little over a year at the time
t petition was circulated?
A. That is right.
Mr. Rissman: If the Examiner please, I move that the last

two questions and answers be stricken as entirely immaterial to the matters in issue in this case.

Trial Examiner Batten: Well, I don't know they are at all material, but I have no desire to foreclose counsel from proceeding, because certainly the plaintiff had plenty of latitude to proceed, and I have no objection, if counsel considers it material.

As I say, I don't know where it is particularly material with reference to the particular case itself. I can see where any evidence with respect to disruption in the plant and the decrease of production might be material.

I will permit counsel to proceed.

Mr. Rissman: I have no desire to curtail counsel's opportunity to put in his case. I merely object to the specific
1744 questions and answers as being immaterial.

Trial Examiner Batten: Well, they have been answered now.

You may proceed, Mr. Engelhard.

Q. (By Mr. Engelhard) Mr. Ramsay, you stated your reasons to your fellow workers why you did not sign the petition?

A. Yes.

Q. That you would be a victim of that classification?

A. Yes, sir.

Q. With your 14 years experience you would have no chance of classifying as an A-1 mechanic?

A. That is right.

Q. Because you had worked at The Falk Corporation less than 7 years.

A. That is right.

Q. Now, then, as a result of the talks that were going on there about the petition, and your reason for not signing it, can you tell us whether or not that caused any loss of production that you know of personally?

Trial Examiner Batten: Now, you can answer that yes or no, whether you know personally.

The Witness: Yes, I do know personally.

Q. (By Mr. Engelhard) Will you explain what you know?

A. Well, that quarrel I had with Mr. Ritchie, we were working on the same type of unit and he was assembling a
job and I knew he was going about it the wrong way. I
1745 tried to correct him, and he told me to mind my own
business, when he wanted to know anything he would come and ask.

He went ahead and built the job and had to tear it down
d again re-assemble it.
Q. (By Trial Examiner Batten) Did you tear it down?
A. I helped.
Q. Did you assemble it?
A. Did I assemble it?
Q. Yes.
A. No, Mr. Ritchie assembled it.
Q. You say you tore it down?
A. I helped to tear it down, yes, if I am not mistaken.
Q. Did the foreman instruct you to do it?
A. Yes.
Q. (By Mr. Engelhard) Well, what was the reason. Just
ike that, please.
Did you and Mr. Ritchie have any conversation about that
rticular job before Mr. Ritchie had completed it?
A. Yes, sir.
Q. What was the conversation?
A. Well, he didn't oil the bearings—
Q. (By Trial Examiner Batten) He asked you what was
e conversation. Did you and Mr. Ritchie have a conversa-
tion about it?
46 A. Yes.
Q. Tell us what was said.
A. You mean did we have a conversation at the time he
s erecting the job?
Mr. Engelhard: Yes.
A. Yes, we did.
Q. (By Mr. Engelhard) Tell us what the conversation
s.
A. Well, I told him he was erecting the job wrong, he had
oil the bearings before he could go ahead and erect the job.
Q. What did he say?
A. He told me to mind my own business, if he wanted any
ice from me he would come and ask me.
Q. Prior to the time of this petition being circulated, what
your relationship with Mr. Ritchie?
A. We were quite friendly.
Q. You had worked together at the same job?
A. No, I never worked with Mr. Ritchie on any job in the
, but I belonged to the same society he did, the St. An-
ws Society.
Q. He is a Scotchman too, isn't he?
A. Yes.

Q. Then what happened? You say—I don't care to repeat his testimony.

Mr. Engelhard: Will the reporter read the last question and answer?

1747 (The record was read.)

Q. (By Mr. Engelhard) Now, after you had suggested to him that the bearings, is that it, needed oil—

A. Oil groove.

Q. An oil groove?

A. Yes, sir.

Q. (Continuing) What did he do?

A. He went ahead and assembled the job with the oil groove bearings— pardon me, he oiled the groove bearings.

Q. Yes.

A. After he was told.

Q. Then what happened?

A. Well, he assembled the job without putting on the oil retainer.

Q. Before he did that, did you notice that he was doing it?

A. Yes.

Q. Did you talk to him about it?

A. No, I didn't.

Q. Why not?

A. Because he told me to mind my own business and I didn't want to interfere.

Q. Well, how long did it take him to complete the assembly of that job after you noticed that he was doing it the wrong way?

1748 A. Well, it took him about a day to assemble the job.

Q. And after the job was assembled, then what happened?

A. They had to tear it down again.

Q. And you assisted in tearing it down?

A. Yes.

Q. At Mr. Ritchie's request?

A. No, at my foreman's request.

Q. And after the job was torn down, what was done?

A. It had to be re-assembled.

Q. Now, how much time, Mr. Ramsay, was there wasted in that operation?

A. Oh, I imagine 24 hours.

Q. 24 hours of labor.

A. Yes.

Q. Of one man or two men?

A. Of two men.
Q. Do you know of any other incident?
A. No, I don't.
Q. There are occasions in the erecting department where e men must cooperate, are there not?
A. Oh, yes.
Q. One man cannot do the job alone.
A. That is right.
Q. What is the effect if the men are unfriendly because of y thing that might have occurrred between them when they are working together?
49 A. Well, they just naturally don't pull together; I couldn't give you any statement on that. I know when worked on the job with a man I didn't get along with, I ould just go ahead and let him do his work.
Of course if it is necessary for us to pull in the same direction, naturally it slows up the job a little bit. I don't now, I couldn't tell you that—
Q. Well, it does not make for increased efficiency, does it?
A. No, it certainly does not.
Q. The tendency is to decrease the efficiency of both.
A. I think so.
Mr. Engelhard: I think that is all.

Cross-Examination.

Q. (By Mr. Rissman) Did Mr. Kinch ever make any reats to you?
A. No, he didn't.
Q. Have you any hard feelings against Mr. Kinch at the esent time?
A. Absolutely not.
Q. Do you know if he has any against you?
A. I know he hasn't.
Mr. Rissman: That is all.
Q. (By Trial Examiner Batten) Have you ever taken out your first papers?
50 A. Yes, I have.
Trial Examiner Batten: That is all.
(Witness excused.)
Mr. Engelhard: Mr. Greget.

LESLIE GREGET, called as a witness by and on behalf of the Respondent, being previously duly sworn, resumed the stand and further testified as follows:

Direct Examination.

Trial Examiner Batten: You were sworn before, were you, Mr. Greget?

The Witness: Yes, sir.

Mr. Engelhard: I might say, Mr. Examiner, that these witnesses I am calling now are merely on the Kinch matter and that we will close that before we go into anything else. I may use Mr. Greget for something later.

Therefore, when I am through now that does not mean I am through with him entirely in the case.

Trial Examiner Batten: I think Mr. Engelhard, perhaps that will simplify it, I mean if there is no objection, Mr. Rissman.

Mr. Rissman: You mean take the Kinch matter and the other matters?

Mr. Engelhard: Close up that Kinch matter.

Mr. Rissman: That is all right with me.

1751 Trial Examiner Batten: I think that perhaps will simplify it.

Mr. Engelhard: I did not want to give the impression that by putting Mr. Greget on the stand and asking a few questions that I was through with him entirely.

Trial Examiner Batten: You may proceed.

Q. (By Mr. Engelhard) Mr. Greget, will you tell us your experience you had with Mr. Kinch regarding the circulation of the petition.

A. Well, we talked about the petition several times.

Q. At what times of the day?

A. Well, it was during working hours.

Q. Who would approach the other?

A. Well, while I was working there Mr. Kinch came along and he had to go through to get to his work, and some of the times he would stop and talk to me on his way.

Q. Now, how long did he stop—how long would he stop and talk or how long did he stop and talk at different times?

A. Sometimes it would be several minutes. I know one particular instance I went over to his department, and in

going by there I stopped and talked with him, oh, quite some time, at least 15 or 20 minutes, at that time.

Q. Where were you going at that time?

A. I was going to the stockroom in his department.

Q. How did you happen to stop there to talk to him?

1752 A. Well, I went right by where he worked.

Q. Was this during working hours?

A. It was.

Q. Who spoke to the other first?

A. Well, I wouldn't make a statement to that question.

Q. You don't recall as to whether you stopped to talk to him or whether he asked you and talk?

A. I really couldn't say, that is quite some time ago.

Q. How many times would you say you have talked about this petition with him during working hours?

A. Oh, I would say four or five times.

Q. Did you ever sign the petition?

A. No.

Q. Well, was the reason that you and Mr. Kinch talked about the petition a number of times because the first time he talked to you about it, you wouldn't sign it?

A. Well, I did not approve of the petition.

Q. Just answer my question.

Trial Examiner Batten: Read the question please.

(The question was read.)

Mr. Rissman: I object to the question as leading and suggestive. He may ask him to state the conversation if he knows.

Trial Examiner Batten: Well, he may answer. I don't know how material it is.

1753 The witness: I can't just get that straight.

Trial Examiner Batten: Read the question again please.

(The question was again read.)

The Witness: Yes.

Q. (By Mr. Engelhard) Did you persist in your refusal not to sign it?

A. Yes.

Q. (By Trial Examiner Batten) And I presume he persisted in trying to get you to sign it, didn't he?

A. Yes.

Q. (By Mr. Engelhard) Now, why didn't you sign it?

A. Because the petition did not meet with my approval.

Q. What information did Mr. Kinch try to get from you esides requesting that you sign the petition, what informaon did he try to get from you?

Mr. Rissman: I object to the question. It is leading and suggestive, and Mr. Engelhard has asked—

Trial Examiner Batten: Well, I think it is. I think if he wants to repeat the conversation, Mr. Engelhard, that he had with Mr. Kinch with respect to this petition, all right, but I think your question is rather—at least it indicates to the witness that there was something further.

If he had a conversation, let him repeat it. You may proceed.

Q. (By Mr. Engelhard) I will ask him the direct
1754 question, then, Did Mr. Kinch ask you about your wage rate?

A. Yes.

Q. Did you give him your wage rate?

A. No.

Q. Why didn't you give him your wage rate?

A. Because that had something to do with the petition.

Q. Can you state whether or not Mr. Kinch's conversation with you and your conversation with him had any effect upon your work?

A. Well, I suppose it took me off my work for the time being.

Mr. Rissman: I object to that and move the answer be stricken.

Mr. Engelhard: Just a moment, he hasn't finished the answer. You interrupted him while he was answering.

Trial Examiner Batten: Let him go ahead and finish his answer.

Mr. Rissman: All right.

Q. (By Trial Examiner Batten) Had you finished, Mr. Greget?

A. Well, that is just about all I would say.

Q. (By Mr. Engelhard) What was your answer? Just let me hear what the answer was.

Mr. Rissman: Read the answer please.

(The answer was read.)

Mr. Rissman: I move that answer be stricken; it is
1755 not responsive to the question.

Trial Examiner Batten: I think it can stand. He said he supposed it did that; it may stand.

Mr. Rissman: For what it is worth.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) How did it take you off of your work?

A. Because I can't be working and talking very well at the same time.

Mr. Rissman: That is all.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Engelhard: Mr. John Brever.

Just a moment, I will take Mr. Green on the Kinch matter first.

Trial Examiner Batten: What is Mr. Green's first name please?

Mr. Engelhard: Harry.

Trial Examiner Batten: I think we will recess for about five minutes.

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

HARRY GREEN a witness called by and on behalf of
1756 the Respondent, bieng previously duly sworn was examined and testified as follows:

Trial Examiner Batten: You have been sworn before, haven't you, Mr. Green?

The Witness: Yes.

Direct Examination.

Q. (By Mr. Engelhard) Mr. Green, you are superintendent of the Falk Corporation?

A. Superintendent of all of the machine shop.

Q. How many machine shops are there?

A. Three.

Q. What are they?

A. 1, 2 and 3 machine shops.

Q. Do you know the foremen in Shop 1?

A. Raffel and Bartels and the general foreman, by the name of Senn.

Q. How many foremen are there in Shop 2?
A. Five.
Q. I mean were at the time of the Kinch matter.
A. There were five.
Q. And how many in Shop 3?
A. Three, three and two, really five foremen there.
Q. In shop 3?
A. Yes.
Q. And how many foremen did you say there were in Shop 1?
1757 A. Three.
Q. In what shop did Mr. Kinch work?
A. Shop 3.
Q. And the foremen in the various shops reported to you about what was going on in the different shops from time to time?
A. Yes.
Q. And the conditions and production?
A. Yes.
Q. And how the men behaved?
A. Yes, sir.
Q. And when the foremen reported to you as to what the condition was, what did you do in order to substantiate what the foremen told you?
A. I went in and asked some of the men what was the matter.
Q. Now, prior to December 10, 1936, that was the day when the Works Council meeting had before it the proposal, the Kinch proposal—
Mr. Rissman: What date?
Mr. Engelhard: December 10th.
Mr. Rissman: Thanks.
Q. (By Mr. Engelhard) Did you notice any activity on the part of Mr. Kinch?
A. Not personally.
Q. Did you make any investigation as to what ac-
1758 tivities Mr. Kinch was carrying on?
A. Yes, I talked to various foremen and several foremen came in and reported to me that he was going around the shop.
Q. Did you talk to Mr. Kinch about it?
A. Once.
Q. What did you say to him?
A. I asked him not to do it. I told him it wasn't good

for the discipline of the shop, and they were not allowed to gossip and talk around the ship.

Q. And subsequent to your conversation with Mr. Kinch, did you have any further complaint from any of the foremen?

A. No, I don't think I did.

Q. What effect did you notice Mr. Kinch's activities had upon the men?

A. Well, one statement there he made to Mr. Harold Falk or Mr. Richard Falk about 30 per cent more production, if they got a share of the profits, these men got very angry about it and said Mr. Kinch didn't know what he was doing, that nobody could do 30 per cent more work, no matter what they got paid.

Q. What effect did that have, that condition of anger among the men, what effect did that have upon production?

Mr. Rissman: I object to the question. The question involves a characterization of the condition among the men, and attempts to influence the answer to the question.

1759 Trial Examiner Batten: Let's have the question please.

(The question was read.)

Trial Examiner Batten: I don't think there is any evidence here that the men were all angry, is there?

Mr. Rissman: He just testified that.

Trial Examiner Batten: You mean about what they could produce, 30 per cent more?

Mr. Engelhard: Yes, it made them angry.

Mr. Rissman: That is not his testimony.

Trial Examiner Batten: I presume, perhaps the best way to show the production is to show whether the production did decrease.

However, you may answer the question.

The Witness: I think I answered it.

Trial Examiner Batten: I don't think you answered it. Read the question again.

(The question was again read.)

The Witness: Well, how much effect upon production, I couldn't truthfully answer, but you could see the men were not working as they should do for a couple of days after that.

Q. (By Mr. Engelhard) What do you mean by that?

A. They were talking among themselves, and they came and told me about it, that it was impossible to do that.

Q. This was after December 10th?

A. Yes.

1760 Q. The information contained in the minutes of the meeting was circulated around the plant?

A. Yes.

Q. And in the minutes the discussion was made that Mr. Kinch claimed 30 per cent more work could be done.

A. Yes.

Q. If the men got a share of the profits.

A. Yes, something like that.

Mr. Rissman: I move that the last question and answer be stricken, if the Examiner please, as leading and suggestive.

Trial Examiner Batten: It may stand.

Q. (By Mr. Engelhard) Which of the foremen complained to you, Mr. Green?

A. I think the first foreman to complain—one of the first was Mr. Senn, he complained about Mr. Kinch being in No. 2 shop for half an hour gossiping with another man.

Then I went to Mr. Deuchars and asked him if he knew what his men were doing. I told him I had a report from one of the other foremen, that Mr. Kinch had been in No. 2 shop for half an hour, and why didn't he look after his men. Mr. Deuchars went to Mr. Kinch then.

Q. What other foreman complained to you?

A. Mr. Deuchars complained once or twice, and Mr. Henderson complained once.

Q. In the investigation situation, did you talk to
1761 some of the men themselves, or did some of the men tell you what Mr. Kinch was doing?

A. They said he was going around and wanted them to let him know how much an hour they were getting for one thing; he wanted to know all the rates of the various men, and that antagonized some of the men because they thought it was the pet theory about how they were going to be paid, and the fellows in the higher brackets didn't like that at all.

Mr. Rissman: I move that be stricken as not relating to the conversation.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Engelhard) Will you state specifically, Mr. Green, what some of the men stated to you and who the men were? I am now inquiring as to Mr. Kinch's activities.

A. I could not state specifically the names because I heard

it various times, heard at various times about it; but I couldn't specifically give the names, but Mr. Greget complained about him stopping with him quite a bit and asked me to tell him to keep away from his machine.

Mr. Greget was one; I don't remember the names exactly, who they were.

Q. What were the specific complaints of these men?

A. That he was stopping at their machine and asking them to sign a petition, and also asking the wage rates.

Mr. Rissman: I move that answer be stricken un-
1762 less the witness can tell us who the men were, the time of the conversation and where it took place.

Mr. Lamfrom: If the Examiner please, that is a ridiculous objection.

Trial Examiner Batten: Well, of course I think, Mr. Green, who is superintendent of the plant, and I presume that is a part of his duties to oversee the whole shop, and I presume that from time to time a great many men talked to him.

Now, I think he should be permitted to testify in general what these men told him. Not being able to recall anyone's name but Mr. Greget, I think that would go to the weight to give to the testimony, but I think a man in Mr. Green's position, who is superintendent of a shop, or a man who is an officer of a union, certainly through his contacts with a great number of men, is able to state in substance what the results of all of these conversations may be.

Mr. Rissman: Except Mr. Examiner, unless we know with whom these conversations or alleged conversations were had we have no way of meeting it. The only man he has mentioned is Mr. Greget, and Mr. Greget's testimony brought out the fact that the conversation was a little different from that he has explained.

Trial Examiner Batten: Well, as I say, I think your ob-
jection goes to the weight of the testimony, the weight
1763 to be given to the testimony.

As I say, I think a man who is superintendent, and also a man who is an officer of a union, who is contacting employees all the time, who is contacting his members all the time, certainly ought to be in a position to make a more or less general statement in this respect, and for that reason I think Mr. Green may answer the question.

Mr. Rissman: Except, as I pointed out, we have no way of meeting it. It has to be taken just for what it is worth.

Trial Examiner Batten: I say, that goes to the weight you will give to the testimony, Mr. Rissman.

You may proceed, Mr. Engelhard.

Mr. Engelhard: What was the question, Mr. Reporter?

(The record was read.)

Q. (By Mr. Engelhard) Mr. Green, how many men were in there at work at the time when this campaign was on to get the petition signed, how many men were working in Shop No. 1?

A. That I couldn't answer.

Q. Well, approximately, were there ten or one hundred?

A. It would be probably somewhere between 50 and 100 in No. 1 shop.

Q. And how many in No. 2 shop?

A. Approximately 100.

Q. And how many in No. 3 shop?

A. I think about the same figure, somewhere in there,
1764 75 or 100. That is, on the day shift.

Q. When you spoke about the number of foremen, did that include the day and night shift?

A. No.

Q. Just the day shift?

A. Yes, sir.

Q. Would you say in the three shops you had approximately 300?

A. In No. 3 shop?

Q. I mean in the three shops.

A. Yes, sir.

Q. Approximately 300 men.

A. Yes, somewhere around that.

Q. And as the various men in these departments talk to you, you receive impressions.

A. Yes.

Q. But you can't at this time say just who the men were that gave you those impressions?

A. No.

Q. And your judgment of what Mr. Kinch did was based upon the impression you received by having the men talk to you about what he was doing.

A. Certainly.

Trial Examiner Batten: Mr. Engelhard, I wonder if you would mind asking him how many men he talked to.

1765 Q. (By Mr. Engelhard) How many men did you talk to about Mr. Kinch over this period of time?

A. I should judge at least 20 at different times.

Q. Were they complaints—were the complaints they made all the same or did they vary?

A. No, they were practically all the same, either about the wage rates or this 30 per cent, or the classification, those three items that they complained about.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) The only man you remember out of the 20 was Mr. Greget?

A. Yes.

Mr. Rissman: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Trial Examiner Batten: That is all, Mr. Green.

(Witness excused.)

Mr. Engelhard: Just a minute. Mr. Green, will you take the stand again, please.

HARRY GREEN was recalled as a witness by and on behalf of the Respondent, being previously duly sworn, further testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) How did you happen to re-1766 member Mr. Greget out of these men?

A. For this reason, that he came to me one morning and asked me to keep Mr. Kinch away from his machine, that he had been there half an hour that morning and he was sick and tired of listening to him.

Those were his exact words.

Mr. Engelhard: That is all.

Mr. Rissman: No questions.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Engelhard: Mr. Brever.

JOHN BREVER, a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) Mr. Brever, what is your first name, please?

A. John Brever.

Trial Examiner Batten: You will have to talk louder, so that everyone can hear you.

How do you spell it?

The Witness: Brever, B-r-e-v-e-r.

Q. (By Mr. Engelhard) Where are you employed?

A. The Falk Corporation.

1767 Q. And how long have you been employed by the Falk Corporation?

A. 19 years.

Q. You say 19 years?

A. Yes, sir.

Q. Have you been employed steady there?

A. Yes, sir.

Q. Now, what is the nature of your work now?

A. Well, I am running a lathe now.

Q. What kind of work did you do when you began?

A. Well, I worked on a mill machine when I started.

Q. What kind of work did you do other than the mill machine and the lathe?

A. Well, I run various machines in the shop.

Q. You run various machines in the shop?

A. Yes, sir.

Q. At this time?

A. At this time, no; at this time I am running a lathe.

Q. Were you a member of the Works Council?

A. Yes, sir.

Q. Pardon?

A. Yes, sir.

Q. When did you become a member of the Works Council?

A. Well, I believe after I filled out the unexpired term of Mr. Kinch, that was in February 1937.

1768 Q. 1937?

A. Yes.

Q. Had you ever been a member of the Works Council
ior to that time?
A. No, sir.
Q. Did you attend all of the meetings of the Works Coun-
subsequent to the time you were elected?
A. I don't understand what you mean by that, before or
ter.
Q. After you were elected.
A. Yes, I attended every meeting.
Q. Do you recall the meeting of the 8th of April?
A. Yes.
Q. Will you tell us what occurred at that meeting, just
ll us generally what occurred at that meeting?
A. Well, at that time, at that meeting, the discussion was
out the raise. You see, I spoke in the month of March for
5 per cent raise and vacation with pay, and the answer was
ven to us on April 8th that we would get the raise but no
cation.
Q. What other matters were discussed at the meeting of
e 8th?
A. Well, the matters there that were discussed, were Mr.
arold Falk attended that meeting and he read a long letter
ıy he could not give us the raise, but he would consider
the matter and grant us a raise the first of June, because
69 the new orders would go into effect about June 1st.
Q. What discussion was had at that meeting, if any,
out the formation of an independent union?
A. Well, there was no discussion at all about forming an
lependent union, at all.
Q. Was there any discussion at that meeting regarding
e future of the Works Council?
A. Well, no, not exactly. I did not know that that would
the last meeting of the Works Council, I did not know it,
t I asked permission from Mr. Harold Falk whether we
ıld meet with the present council men and ex-council men
have a separate meeting, and that was granted.
Q. Just tell us what you said and what Mr. Falk said
out that matter.
A. Well, the only thing I could say about it is that I asked
. Falk for permission and it was granted, that we could
e that meeting.
Q. Did you explain to Mr. Falk at the time the purpose
the meeting?
A. Not, not at all.

Q. Now, why did you ask him permission to have a meeting?

A. Why, at the time, you know, there was a bill pending at Madison which they called the Severson Act, and I knew if that bill would go through that the Works Council would be abolished.

1770 I happened to be chairman of the Works Council, and I informed Mr. Hydar I have a meeting and to send notice to all all of the representatives, and ex-representatives, that we are going to have a meeting, but I didn't say for what purpose.

So, on April 12th we had this meeting.

Q. And what occurred at that meeting?

A. Well, at that meeting, as we gathered with the members that were present, I said, "Before we start we will have to elect a chairman", and they appointed me as chairman, so I read a letter to them which I have here, that was read at that meeting.

Q. Will you please read that letter?

A. Yes, sir.

"To the Council Members and Ex-Council Men:

"As you all know by now, there is a bill pending in the Legislature at Madison which is the so-called small Wagner Labor Relations Bill. We today are facing a serious problem, more than some of us think about, due to the fact that shop council will be abolished if enacted in law, and it is up to us older employees of the Falk Corporation to work for perfect harmony and create our own union which is according to my opinion legal under the Wagner Labor Act."

That was the letter I read at that meeting.

Trial Examiner Batten: May we have that introduced as an exhibit please?

1771 Mr. Lamfrom: I think it should be.

Trial Examiner Batten: Don't do any writing on that, don't even put your pencil on it.

Q. (By Mr. Lamfrom) What is this you have got here, Mr. Brever?

A. This is the letter that I read at the meeting, from here on, and here, the other part, that I sent notice to Mr. Hydar to have the notice sent out to the ex-council men.

Q. Is this a memorandum that you made up?

A. Yes, this is.

Q. Where is the letter?

A. Here is the letter in here.

Q. Where is the original, the one you had at the time?
A. This is the one, I recopied it, what is here. That is the original right here, the way I read at that time.
Q. Have you got the original letter?
A. No.
Mr. Engelhard: I don't know whether we can introduce a memorandum.
Trial Examiner Batten: I don't know that I exactly understand him.
Q. (By Trial Examiner Batten) When did you write this?
A. I have had this a long time—
Q. When, I say.
1772 A. Well, right—just the letter part in there, I had—
Q. No, this piece of paper, when did you write it?
A. That I got about two weeks ago.
Q. What did you do with the original one?
A. The original one, I destroyed that.
Q. Why did you destroy that and put it in here?
A. Because I never knew this would come to a head like this.
Q. Did you think you would need this and you wouldn't need the original?
A. Well, I just put that down because I remembered it.
Q. My question is, did you think you would need a memorandum here but you would not need the original paper?
A. Yes.
Mr. Engelhard: We can't very well introduce a memorandum.
Trial Examiner Batten: I will introduce it, I think it should be introduced, the way it is; I think it is proper that it should be.
Mr. Rissman: You mean with the other notes?
Trial Examiner Batten: Yes, that is the only record we have. He says he destroyed the other.
The Witness: Sure.
Mr. Engelhard: Well, if counsel does not object, we will introduce the memorandum notes.
1773 Trial Examiner Batten: Well, I have requested that you introduce it, and I presume it is assumed that I am not apt to rule that it will not be received.
Mr. Rissman: I join in the request.
Mr. Engelhard: He hasn't objected.
Trial Examiner Batten: I didn't say that

Mr. Rissman: I join in the request.

Mr. Engelhard: Will the reporter mark this Respondent's Exhibit No. 6? That consists of two pages.

(Thereupon the document above referred to, was marked Respondent's Exhibit No. 6, for identification.)

Mr. Engelhard: Now I offer in evidence this memorandum which includes the letter, a copy of the letter that he says is included in the memorandum, in evidence.

Trial Examiner Batten: It will be received.

(Thereupon the document above referred to, heretofore marked as RESPONDENT'S EXHIBIT NO. 6, for identification, was received in evidence.)

Q. (By Mr. Engelhard) Mr. Brever, after you had read this letter at the meeting of these men, what occurred then?

A. Well, we couldn't come to no agreement, no—

Q. No agreement as to what?

A. I mean after this letter, after this discussion, we had quite a discussion about it, so we couldn't get no agreement or settlement about the Wagner Labor Act or about the Severson Act; so I, acting as chairman, I sent Frank
1774 Kokalj to get Mr. Harold Falk to the meeting.

When Mr. Harold Falk came to the meeting I told him to take the floor, and told him to explain some of the points in the Act, and he told us he didn't understand the law thoroughly, but that we could do according to our own choosing and join any organization which we may see fit; we could even go as far as creating our own union if we wished to do so.

The meeting adjourned at that point.

Q. Were you at any other meeting after that meeting of the 12th?

A. After the 12th, I left the plant on April 12th due to illness and I did not return to work until April 21st; I did not attend no other meeting.

Q. What was your illness?

A. I have spleen trouble.

Q. Mr. Brever, when did you tell Mr. Hydar about notifying the men?

A. Immediately after the meeting of April 8th.

Q. Did you have any further occasion to talk to Mr. Hydar about notifying the men?

A. Not until the day of the meeting, the 12th.

Q. Then what happened?

A. Then I asked Mr. Hydar whether he had sent the notice to all of these members and he said it slipped his mind,

he had sent it to some of them, but not all, and I believe
1775 he telephoned or went personally, I don't know where he got them, but he got them somehow and they attended the meeting, some of them.

Q. Now, will you tell us what the conversation was between these men and yourself—between the men and you on one side and Mr. Falk on the other at this meeting of the 12th?

Mr. Rissman: I object to the form of the question. He hasn't indicated that there was any, as the question indicates.

Trial Examiner Batten: Well, I presume the question, Mr. Engelhard, is for him to repeat the conversation that took place.

Mr. Engelhard: Yes, that is what I am asking him.

Trial Examiner Batten: You may just repeat the conversation that took place at this meeting, what you said, what Mr. Falk said and what anybody else said.

The Witness: Well, I exactly don't remember what Mr. Falk said, as much as what I previously said, that we could join any kind of organization, and we could even go as far as having our own union.

Q. (By Mr. Engelhard) Was there any conversation there as to the matter of meeting on company property?

A. Not at all.

Q. Was there anything said about a wage increase at that meeting?

1776 A. Well, there was one member, he asked Mr. Falk why he wanted to give us a raise on June 1st, instead—

Q. Who was that man?

A. I think it was Mr. Wilfer, and after a lengthy discussion there with Mr. Falk and Mr. Wilfer, Mr. Falk finally agreed that we could get it on May 1st.

Q. Was there any discussion at that time with Mr. Wilfer, did you hear any discussion about an independent union?

A. Not that I know of.

Mr. Engelhard: That is all; well, just a question further.

Q. (By Mr. Engelhard) Mr. Brever, how did it happen that you drew up this memorandum which is Respondent's Exhibit No. 6?

A. Well, I generally always do that when I am to appear in court or when I have anything—when I have any discussion with anybody, it is my practice to do that.

Q. (By Trial Examiner Batten) Let me ask you: You drew this up at the time of the meeting?

A. No.

Q. Then you didn't follow your practice on that occasion?

A. I had another one there, but this one, I have drew this one—I threw the original one away and then I make this one.

1777 Q. (By Mr. Engelhard) Let me ask you, did you make this memorandum from memory?

A. Yes, sir.

Q. Then you didn't have the original lying before you when you made this one?

A. Sure, I had the original, but threw it away, but I did write into my memorandum here what occurred at the April 8th meeting.

Q. What was the occasion for your writing this?

A. The occasion was, in case any discussions were brought up, that I would have something then as a record.

Q. Did anyone interview you about coming to court prior to the time that you drew that memorandum?

A. No, sir.

Q. When was the first time you were interviewed regarding your testimony here this morning.

A. The first time I was interviewed?

Q. Yes. When was the first time you were interviewed by anybody in connection with this case?

A. I believe it was yesterday, wasn't it?

Q. Well, I am asking you.

A. It was yesterday.

Q. You were present at the meeting yesterday afternoon at which I was present?

A. Yes, sir.

1778 Q. You did not know at the time you drew your memorandum whether you would be called to court, did you?

A. No, sir, absolutely not.

Q. How did it happen that you threw away the original?

A. Well, the original, I thought I would not need it any more, because after this discussion I thought I would write this all down in one for my own memorandum, see; that is, I write the letter here, what I read to the council on April 12th.

Mr. Engelhard: That's all.

Trial Examiner Batten: I wonder if you will ask him in what respect was the letter different than what this says?

Q. (By Mr. Engelhard) Was there anything else in this letter originally that you read to the council?

A. No, just this, absolutely the same as it was read.
Q. (By Trial Examiner Batten) I mean in reading it, it says "In part as follows."
A. Well, the part,—well, I put that down just the way I thought it should read.
Q. (By Mr. Lamfrom) This exhibit here is a statement of the events.
A. Yes.
Q. Of that time.
A. Yes.
Q. Is that right,—and the letter included, the letter is
1779 included in the statement of events.
A. Yes.
Q. And what you did I suppose was to draw this up, so that you would have the whole proceedings of the day's activity here before you?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. And in this memorandum, you included what you said in that letter.
A. Absolutely.
Q. Is it the same as it was in the letter?
A. It is the same thing.
Q. You did not say anything else?
A. Oh, no.
Q. Anything more?
A. That was when I opened the meeting, I read that letter.
Q. In making this memorandum, did you put the contents of that letter in here the way exactly it was said in the letter?
A. Yes, sir.
Q. Then after you had made this memorandum, you threw away the letter?
A. I threw away the letter; I copied the letter in here, threw the other away because I didn't think I would ever need it; I didn't think I would ever use this.
1780 Q. All right.
A. I just put that down for my own safety.
Mr. Lamfrom: That is all.
Mr. Rissman: Pardon me a moment while I read this.
Trial Examiner Batten: Yes.

Cross-Examination.

Q. (By Mr. Rissman) When did you write this?
A. Oh, about two or three weeks ago.
Q. Did you talk to anybody about it?
A. No, sir.
Q. Why did you write it?
A. For my own memorandum sake.
Q. Did you have any purpose in mind when you wrote it?
A. Not exactly, no.
Q. How many other memorandums have you of what occurred at shop meetings?
A. Oh, well, I think I belong to the Christmas Club, and I have got certain memorandums there which I read at meetings also. I just threw some of them away here the other day.
Q. When do you usually make up your memorandum, how long after the events take place?
A. Well, at the Christmas Club there, when I belonged to the Christmas Club I used to make them right after the meeting or before I read them at the meeting.
Q. But in this particular event, you didn't make up
1781 the memorandum right after the meeting?
A. No.
Q. You waited until two weeks ago?
A. Oh, two or three weeks ago.
Q. Two or three weeks ago.
A. Yes.
Q. At any rate, you waited from April 12th to about August 1st?
A. Sure; but I had the letter all the time.
Q. But we are not talking about the letter now, we are talking about the memorandum.
A. Yes.
Q. You waited from April to August before writing the memorandum?
A. Yes.
Q. What occurred about August 1st that made you feel you should have the memorandum?
A. Oh, nothing in particular, I just sat down and thought the meeting over and I thought I would make a memorandum of what happened at that time.
Q. Did you make any other memorandums on the first of August?

A. No, I just happened to have a new pencil and pen and I tried it out, thought I would write.

Q. And while you were trying out your new pencil you wrote this memorandum.

1782 A. Sure.

Q. You said you had a new pen too?

A. No, I sent the pen back.

Q. What kind of pencil did you have?

A. Something like Eversharp.

Q. A mechanical pencil?

A. Yes.

Q. Did it have an eraser on it?

A. There was one there.

Q. You used the eraser at the bottom of this memorandum?

A. Because I didn't spell that word right.

Q. You erased the whole line there, because you didn't spell one word right?

A. Sure.

Q. Look at it.

A. Right here, "To create",—

Q. What—

Mr. Lamfrom: Let him finish.

The Witness: "—our own union."

Q. (By Mr. Rissman) What was written here before "own union"?

A. I had that spelled wrong, I had a "d" on there.

Q. What did you have over here where this word "union" appears? That is an "f" here?

A. That is an "f".

1783 Q. (By Mr. Rissman) An "if"?

A. See, it was rubbed out.

Q. What was rubbed out over here?

A. Well, I asked—"a" and "b".

Q. How was the other memorandum written, in pencil or ink, the letter?

A. The other was in pencil also.

Q. In pencil also?

A. Yes, sir.

Q. You wrote that one?

A. I did.

Q. When?

A. Before the April 12th meeting when the Severson Act was pending at Madison.

Q. Did you write it before or after April 8th?

A. Before.
Q. Before the Works Council meeting?
A. Before the Works Council meeting.
Q. You have testified here that when you were at the meeting of April 8th you didn't know anything about the Independent Union?
A. No, I didn't know the Independent Union, I even didn't know the Severson Act would be passed.
Q. Whose idea was it to call a meeting of the former Works Council members and present Works Council
1784 members for April the 12th?
A. My idea.
Q. Did you talk to anybody about it?
A. I think I talked with Leslie Greget.
Q. Did you talk to anybody else about it?
A. No, sir.
Q. What did you and Leslie Greget discuss about it when you saw him?
A. How?
Q. What did you and Leslie Greget discuss about it when you spoke to him?
A. Well, Leslie Greget came over to me and asked me, that I should call the special meeting on account of having some discussion about the Severson Act that was pending in Madison.
Q. When did you tell Mr. Hydar about this meeting?
A. Mr. Hydar?
Q. Yes.
A. Mr. Hydar, I told him to send the notice.
Q. When?
A. At the April 8th meeting, at the adjournment.
Q. Right after the adjournment you spoke to him?
A. Yes, sir.
Q. Did he ask you what kind of meeting you were calling?
A. Not at all.
1785 Q. Did you ever ask Mr. Hydar to send a notice out before for any meeting?
A. Not me.
Q. Did you volunteer to Mr. Hydar the reason for the meeting of April 12th?
A. I did not tell him of the purpose of that meeting.
Q. What made you decide to call the ex-council men?
A. Well, the reason for that was because they all served

on the council and I thought that we will discuss some things, hey could see the matter more clearly than anybody else.

Q. Did Les Greget approve of the idea of the ex-council men?

A. Absolutely.

Q. You spoke to him about it?

A. Sure.

Q. Who else did you talk to about it?

A. I didn't talk to anybody else about it.

Q. When you asked Mr. Hydar to call the ex-Works Council men, did he ask you why you wanted them too?

A. No, he didn't ask me anything.

Q. Pardon?

A. He didn't ask me anything.

Q. He didn't ask you anything?

A. No, I just told him to look up the names and send out the notices because we were going to have a meeting-

786 on April the 12th.

Q. What did Mr. Hydar say?

A. I told him to send the notices, and then it slipped my mind, and on the day of the meeting I asked him did he send he notices, and he said it slipped his mind, so he either got hem by telephone or person, I don't know how.

Q. Which ones slipped his mind?

A. How?

Q. Which ones slipped his mind?

A. I couldn't say that.

Q. Do you know which ones he sent the notice to originally?

A. Well, I couldn't say offhand to who he sent them, but know some of them got it and others didn't.

Q. Did you give him a list of names to whom to send the otices?

A. No, he had a list there written down of the members hat served previously on the Council.

Q. When did he have that list?

A. He had it at the meeting, one list at the meeting.

Q. Which meeting?

A. The April 8th Works Council meeting.

Q. At the April 8th meeting did he have a list of the ex-ouncil men?

A. I asked him to show me the list of the ex-Council men, then I told him to send the notices—

787 Q. But he had that list complete at the April 8th meeting?

A. He thought at first he didn't have it, until I requested to see it.

Q. But he did have it?

A. He did have it.

Q. Did you request him to send notices to anybody else besides the ex-Council men and present Council men?

A. No, just the ex- and the present.

Q. When he came to the meeting of April 12th—pardon me.

Then after the meeting of April 8th you wrote this letter?

A. After April 8th?

Q. Yes.

A. Yes,—well, not the letter; not the letter, the latter part I had.

Q. When did you write this?

A. Well, I couldn't say exactly what day I wrote that.

Q. I said the letter.

A. I wrote that before we had the meeting.

Q. Before April 8th?

A. Before the April 12th meeting.

Q. Did you have this letter at the April 8th meeting?

A. No.

Q. Then between April 8th and April 12th you wrote the letter?

1788 A. Between April 8th and April 12th I wrote the letter.

Q. Did you talk to anybody about it?

A. About the letter?

Q. Yes.

A. No.

Q. Did you show it to anybody before you came to the meeting?

A. No.

Q. Did you show it to Leslie Greget?

A. No.

Q. Did you show it to Mr. Hydar?

A. No.

Q. Was it written on the same kind of paper that this memorandum is on?

A. No, it was written on another sheet, you know, that wouldn't have that name on top.

Q. Where did you write, at home?

A. At home.

Q. Where did you write this memorandum?
A. At home.
Q. Where did you get this Falk Corporation stationery?
A. Well, I had some in there and I stuck it in in my pocket to write on.
Q. You took home some plain sheets to write the memorandum on?
1789 A. Yes.
Q. Where did you get them?
A. I could get them at the inspector's.
Q. Do you give it to anybody that asks for it?
A. Sure, you can get a sheet of paper if you want to write.
Q. How many sheets did you take?
A. Two of them.
Q. That was all you took?
A. Yes, sir.
Q. Did you know you would be able to get it on two sheets?
A. Yes.
Q. How did you know that?
A. Because I write pretty close, I knew I could get it on; they are pretty long sheets.
Mr. Rissman: That is all.
Trial Examiner Batten: Just a moment, is there anything further?
Mr. Engelhard: Are you through?
Mr. Rissman: Just a moment; just one question.
Q. (By Mr. Rissman) Where did you have those since two weeks ago?
A. I carried it in my pocket all the time.
Q. Have you other memorandums in your pocket?
A. No, I don't think so; I think I have got some newspaper clippings.
1790 Q. On this case?
A. On this case. I think I have got some more here, I don't know what they are. Generally I keep them—
Q. (By Trial Examiner Batten) The question was, have you got any more memorandums?
The Witness: On that case?
Trial Examiner Batten: Any case.
Q. (By Mr. Rissman) Any case.
Trial Examiner Batten: Have you got any kind of memorandums in your pocket?

A. Sure I have got some.
Q. (By Mr. Rissman) What is that?
A. This is January 1929.
Q. What is that?
A. That is just where the little girl wrote to me.
Q. That is all you have got?
A. That is no memorandum though.
Mr. Rissman: That is all.
Trial Examiner Batten: Just a moment. Anything further, Mr. Engelhard?
Mr. Engelhard: Are you through, Mr. Rissman, with your cross examination?
Mr. Rissman: Yes.

Redirect Examination.

Q. (By Mr. Engelhard) Mr. Brever, Mr. Rissman
1791 asked you whether or not you talked about the advisability of having a meeting among the members of the Works Council and ex-members of the Works Council, whether you talked about that with anyone else.
You stated that you only talked to Les Greget.
A. Yes, sir.
Q. How come you and Les Greget talked about it?
A. Well, Les Greget always came over to my machine and he was talking once, he says. "There is a bill pending at Madison that is going to abolish the Works Council. We ought to get together and discuss something else."
Q. When was that with reference to the 8th of April? About how long before the 8th of April was that conversation that you had with Les Greget?
A. About three or four weeks or so, that time when that bill was in Madison, he came over to me and discussed it.
Q. At the time when the meeting took place on the 8th did you know how far that bill had advanced in the Legislature?
A. I think it was pretty near due for passage.
Q. Did you know whether at that time it had passed the House of the legislature?
A. Not on April 8th.
Q. What led you to believe that that bill would eventually pass?

Mr. Rissman: I object to that question, asking this
1792 witness to prophesy about an Act of the legislature.

Trial Examiner Batten: Well, maybe he is a good prophet.

Mr. Rissman: Perhaps he is.

Trial Examiner Batten: You may answer the question.

The Witness: What was the question?

Q. (By Mr. Engelhard) What led you to believe that the Severson Act as it was called in the Senate, and the Sigman Bill as it was called in the Assembly, would eventually pass?

A. Well, I read a lot about matters that go on at Madison, and I knew they had something like 48 amendments which they threw out and they were going to pass the original bill as it was.

Q. In other words, you got your information out of the newspapers.

A. Absolutely.

Trial Examiner Batten: Don't put this in the record.

(Discussion outside the record.)

Trial Examiner Batten: All right, proceed.

Q. (By Mr. Engelhard) Mr. Brever, from your reading of the newspapers and from discussions you had while this bill was pending in the legislature, did you know what effect the passage of that bill would have on the existence of the Works Council?

A. Absolutely.

Mr. Rissman: May I have that question read?

1793 (The question was read.)

Q. (By Mr. Engelhard) What did you know?

A. Well, I knew that that bill if passed and enacted into law would abolish all company unions.

Q. You classified the Works Council as a company union?

A. Well, I called it a company union, the Works Council and everything.

Q. And in anticipation of the passage of the bill, you said you became interested in talking about the future of the men in this plant with Les Greget?

A. Yes.

Mr. Engelhard: That is all.

Mr. Rissman: That is all.

Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Trial Examiner Batten: Is that all?

Mr. Rissman: Pardon me.

Q. (By Mr. Rissman) Are you a member of the Independent Union?

A. At the present I am, yes.

Q. (By Mr. Lamfrom) When did you become a member of the Independent Union?

A. Well, as I said before, I left the plant on April the 12th at 2:30 due to illness, and I returned back to work on April 21st. When I came to my tool chest I opened that tool
1794 chest and I found two cards in there, a blue card and a white card.

Q. We don't know what the blue and white cards mean. Maybe the boys do and you do, but tell us what the blue card meant.

A. The blue card was the C.I.O. card.

Q. And the white card?

A. The Independent Union card.

Q. And what did you do with those cards?

A. Well, according to my own judgment I signed the white card.

Q. When was that?

A. On the 21st.

Q. On the 21st?

A. Yes.

Q. And from that time on you say you were a member of the Independent Union?

A. I am.

Q. And pay your dues?

A. Every month.

Q. How much?

A. 50 cents.

Q. Are you an officer of the Independent Union?

A. No.

Q. Are you on the board of directors?

A. No.

1795 Q. Do you hold any office whatsoever?

A. No, none whatsoever.

Q. Let me ask you, John, did you take suddenly sick on the 12th?

A. I did.

Q. And the boys knew that?

A. The boys knew that I left the plant that day sick.

Q. When you say the "plant," you mean you left the meeting?

A. No, I waited until the meeting adjourned but I was feel-

g bad at the meeting already, and I was glad they ad-
urned early so I could get out and go home.
Q. The boys knew that?
A. The boys knew that.
Mr. Lamfrom: That is all.
(Witness excused.)
Trial Examiner Batten: I think we will adjourn until 2
clock.
(Thereupon, at 12:30 P. M. a recess was taken until 2
clock P. M. of the same day.)

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96 After Recess.
(Whereupon, the hearing was resumed, pursuant to
cess, at 2 o'clock P. M.)
Trial Examiner Batten: I believe we are ready to pro-
ed, gentlemen.
Mr. Engelhard: I will call Mr. Landry.
Mr. Rissman: Just a moment, may I ask the purpose of
lling Mr. Landry?
Mr. Engelhard: Just to ask him one question.
Mr. Lamfrom: To act as a witness.
Mr. Rissman: Mr. Landry is not under subpoena.
Mr. Lamfrom: That does not make any difference, he is
re.
Mr. Rissman: It certainly does make a difference. I want
know the purpose of calling Mr. Landry on the stand. He
tified and he was cross examined.
Mr. Engelhard: I can make him my own witness, can't I?
Mr. Lamfrom: Nothing that he testified to on examina-
n by you will be gone into at this time.
Mr. Rissman: I object to his being called as a witness.
Mr. Lamfrom: We are calling him as an adverse witness.
Trial Examiner Batten: You say that you have objection,
Rissman?
Mr. Rissman: Yes, sir, unless we know the purpose of this
examination, I object to his being called at this time
since he has not been subpoenaed, and he has testified
and he was cross examined.
Mr. Lamfrom: He is present here now physically in the
m in which this hearing is taking place and we are asking
to take the witness stand.
What do you want us to do?

Trial Examiner Batten: As I presume, as a witness for the respondent.

Mr. Engelhard: Yes.

Trial Examiner Batten: Mr. Lamfrom, is that correct?

Mr. Lamfrom: Yes.

Trial Examiner Batten: Mr. Rissman, I see no objection except this, no objection as to Mr. Landry individually. However, in order that we may be guided somewhat in the future conduct of this case, let me ask if it is the purpose of counsel to from time to time call anybody that happens to be in the courtroom to ask him questions.

Mr. Lamfrom: No, not at all.

Trial Examiner Batten: In other words, I don't want the fact that I permit Mr. Landry to take the stand now, to indicate that as the hearing progresses I shall permit any counsel to just indiscriminately call people to the stand here who have previously testified because some incident may have occurred subsequent to their testimony, on which you want to ask questions.

1798 So that, with the understanding that it will have no bearing whatever on any future ruling, I might say, Mr. Rissman, I can see no objection in this case to asking, as counsel said, as I understand, they have one question they want to ask Mr. Landry.

Mr. Rissman: Except this, if the Examiner please: The Act provides that all parties to the proceeding may ask for a subpoena to any person they wish to have appear here and testify.

I am objecting on the ground that Mr. Landry has not been subpoenaed.

Now, if the Examiner overrules my objection, there is nothing to do but have Mr. Landry take the stand.

Trial Examiner Batten: Mr. Landry, have you any objection to answering a question?

Mr. Landry: I feel I should follow the advice of my counsel.

Trial Examiner Batten: As far as the Examiner is concerned, you may take the stand and answer the question, that is without any reference to any future ruling, and I might say at this time that I am not going to permit the indiscriminate calling of witnesses after this time.

Therefore, Mr. Rissman, I will overrule your objection.

HAROLD LANDRY, a witness called by and on behalf
799 of the Respondent, being previously duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) Mr. Landry, this morning you eard Mr. Brever read a letter, and I am asking you now hen you were present at that meeting on the 12th whether e read such a letter?

A. I do recall the letter.

Mr. Engelhard: That is all.

Mr. Rissman: I move the question and answer be stricken or the reason that Mr. Landry was not subpoenaed as a itness.

Trial Examiner Batten: Well, it may not be stricken for hat purpose, but it may be stricken for the reason it is quite pparent now that counsel's only purpose was to call an individual who happened to be in the room, for the purpose of uestioning him with respect to a matter testified to subsequent to his appearance on the stand.

Now, it can stand in the record, but my ruling is it may be tricken, so if you desire to take exception to that later on, will be there.

Mr. Lamfrom: Let me ask, Mr. Examiner, suppose we ad gone through the formality of subpoenaing Mr. Landry or the purpose of having him testify on this point, would ie situation have been any different?

He was here in the courtroom and Mr. Engelhard 800 asked him before the adjournment—

Trial Examiner Batten: Well, I don't know that ere would have been any difference, Mr. Lamfrom, in his stimony.

Mr. Lamfrom: No, I mean with the procedure.

Trial Examiner Batten: The only difference would have en, I still think that perhaps would have been the best procedure.

However, as I say, I am permitting the testimony to stand the record with my ruling on it, so that counsel may take y exception that he cares to, to that, at any time in the ture with respect to these proceedings.

Mr. Lamfrom: It would seem to me that it would be only elementary proposition, that in the administration of jus-

tice that if a person happens to be in the room and it becomes necessary in the furtherance of the establishment, as we conceive it, of the justice of this case, that he may be called to the stand and asked and answer a question.

At least that is the common practice here in Wisconsin. I have never heard the objection raised that the attorney raises here.

Trial Examiner Batten: Well, his testimony is there; I permitted him to answer the question, and you may take exception to the ruling of the Trial Examiner in that respect.

Mr. Lamfrom: May I ask the Trial Examiner to indicate the reason why the testimony—the motion to strike the
1801 testimony is granted?

Trial Examiner Batten: I don't know as the Trial Examiner is under any particular obligation to state his reason; therefore, I do not believe I will state any.

Mr. Engelhard: Just how are we going to meet the situation?

I put Mr. Landry on the stand to corroborate Mr. Brever as to the reading of that letter at that meeting.

Now, is that incompetent? Is it irrelevant? Is it immaterial?

Trial Examiner Batten: Well, I think of course as far as that is concerned, there are plenty of witnesses who counsel could call, who were present at that meeting. As I recall it, there were about 20 people there, and there are plenty people who could testify as to whether the letter was read.

Mr. Lamfrom: On the other hand the testimony of Mr. Landry, an adverse party to this matter, that the matter was read stamps it with considerable credibility right on the face of it; in other words, it goes to the weight.

Trial Examiner Batten: Of course, I did not know there was any dispute as to whether or not the letter was read.

Mr. Lamfrom: I don't know whether there is or is not.

Trial Examiner Batten: I don't know thaf there is any dispute as to whether or not the letter was read.

1802 Mr. Lamfrom: There is this fact, that the witness appeared with a memorandum which he said he made, that the original letter he threw away and we put this witness on the stand for the purpose of establishing out of his own mouth that the letter, as indicated from the memorandum of the witness this morning, was read to this meeting at which Mr. Landry was present.

That is the establishment of a simple fact, the truth of which can hurt no one.

Trial Examiner Batten: I don't know as anyone is disputing the truth of it.

As far as the Examiner is concerned, I have made my ruling and it stands as made.

Mr. Rissman: And the answer is stricken?

Mr. Lamfrom: Then we will ask leave, Mr. Examiner, to have a subpoena issued for Mr. Landry.

Mr. Rissman: I resist that.

Mr. Lamfrom: We haven't control of the subpoenaes.

Mr. Rissman: I will resist that motion, that is not in proper form according to the rules and regulations of the Board.

Mr. Lamfrom: We will be guided naturally as we have heretofore, by the rules and regulations of the Board, whatever they may be on that point, they will be followed.

1803 Trial Examiner Batten: Of course if the request for the subpoena is made, Mr. Lamfrom, in writing, with a statement as to its purpose, the Trial Examiner will say at this time that I shall issue the subpoena.

Mr. Engelhard: Suppose Mr. Landry gives the same testimony?

Trial Examiner Batten: It does not make any difference whether he gives it or not, I have made my ruling, and as I said, if you make a request for a subpoena, Mr. Landry is here, and I will authorize its issuance.

Mr. Engelhard: The lack of the subpoena I understand is not the reason you have made the ruling.

Trial Examiner Batten: I shall not state any reason. Mr. Lamfrom wanted to know concerning a subpoena, and I said if he requested it I will authorize its issuance.

Mr. Engelhard: I rise to a point of information, Mr. Trial Examiner, and that is this: If Mr. Landry were under subpoena at this time the ruling would be the same?

Trial Examiner Batten: I am not making a ruling unless the situation arises for me to make one, or in other words, I am not going to anticipate any motions. In other words, if a motion is made, at the time it is made I will be glad to rule on it.

Mr. Lamfrom: I see nothing in the rules requiring as a condition precedent to a witness testifying in a proceeding of this kind, that he be subpoenaed in court.

1804 Mr. Rissman: No one said that appears in the rules.

Mr. Lamfrom: Then what is your position?

Trial Examiner Batten: Now, Mr. Lamfrom, I have made my ruling and I don't think any further discussion between you and counsel will have any bearing on it.

If you request a subpoena I have already advised you that I will authorize its issuance.

Mr. Lamfrom: All right, we will have someone sent down to the Labor Board for a subpoena. Is there anyone present down there that could issue a subpoena?

Mr. Rissman: I suggest that counsel read the rules.

Mr. Lamfrom: I have read the rules, I am not a petti-fogger—

Trial Examiner Batten: Now, just a moment, gentlemen, if you will please address your remarks to the Trial Examiner, as far as that particular issue is concerned, I think it is settled and we can proceed.

Mr. Lamfrom: I now make application under Rule 21 for the issuance of a subpoena for Mr. Landry to appear here and testify concerning the question as to whether the letter testified to by the witness Brever this morning was read at the meeting as he testified.

Mr. Rissman: I resist that motion because the rules of the National Labor Relations Board require that any request for subpoenaes be in writing, stating the name of the
1805 party subpoenaed, and shall be timely, and shall specify the nature of the facts to be proved by the witness.

Mr. Lamfrom: Where does it appear in the rules that the application be in writing? Show me! Read it!

I will show—Mr. Trial Examiner, I will show you the rule. If there is anything there that the application must be made in writing, I would like to see it.

Trial Examiner Batten: I think I have one here, I think it is the same one.

Mr. Lamfrom: I don't doubt it.

Trial Examiner Batten: April 27th, 1936.

Mr. Lamfrom: Correct, Sections 20 and 21.

Mr. Rissman: That is yours and this is mine.

Mr. Lamfrom: Well, let's exchange them then.

1806 Trial Examiner Batten: Rule 21 says that "application for the issuance of a subpoena may be filed by any party to the proceeding with the Regional Director or, during the hearing, with the Trial Examiner, and such application shall be timely and shall specify the name of the witness, the nature of the facts to be proven by him, and must specify the documents" and so forth.

There is nothing in that section with respect to a written application, but I assume when it says "filed", it would have to be written, and I also assume when it states "you must name the witness and the nature of the facts to be proven," that it necessarily would have to be in writing if it were filed.

Now, I understand you contend by dictating into the record, you are filing a request?

Mr. Lamfrom: Exactly.

Trial Examiner Batten: And the only person who can issue subpoenas, as a matter of fact, is the National Labor Relations Board, so that the Trial Examiner will refer the matter to the National Labor Relations Board with recommendation that it be granted.

Mr. Rissman: I will object to the method of filing, and state that the Act says "application shall be filed"; it means undoubtedly a written application.

Mr. Lamfrom: In addition to the application which
1807 is made to the Trial Examiner, we will also file with the Board here in Milwaukee a written application for the subpoena.

Mr. Rissman: There is no Board in Miwaukee.

Trial Examiner Batten: In order to settle the matter now, I have decided to change my mind, which is a very poor policy for a trial examiner or judge to ever do, but we have wasted ten times more time now than this matter warrants, and Mr. Landry's testimony may stand as it is.

Mr. Rissman: If the examiner please, I move the testimony be stricken on the ground that he did not indicate he saw the letter at the time it is alleged to have been read or that he compared it with the one that was introduced here, or that he knows it was the same matter.

Trial Examiner Batten: The motion is denied.

Mr. Lamfrom: The application for a subpoena is withdrawn.

(Witness excused.)

Mr. Engelhard: Do I understand you are going to proceed with the gentleman that is here with the records?

Mr. Rissman: Yes, the Examiner asked Mr. Meindle to bring in the records of the union with reference to the members and Mr. Meindle has those records at the present time.

Trial Examiner Batten: Will you take the stand, please?

LOUIS MEINDLE, a witness called by and on behalf of the National Labor Relations Board, being first duly
1808 sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Rissman) Mr. Meindle, what records have you in your possession at the present time?

A. I have the original application cards that were made by the members applying for application in the Amalgamated Association, and I also have the proof strips of our stencils that were cut from the union lodge of our grand lodge at Pittsburgh.

Q. What do the records indicate as to the number of applications that were filed with your union for membership by Falk Employees?

Mr. Clark: That is objected to as not being the best evidence.

Q. (By Mr. Rissman) How many application cards do you have that have been filed for membership of Falk Employees?

A. The application cards have not been counted since they came back, but our proof strip shows exactly 622, and I have a letter to verify my statement and additional blank union cards are being sent me.

Mr. Clark: That is objected to, and I move that it be stricken as not responsive.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Rissman) You say the number indicated by the proof strips are 600 and how many?

1809 A. 22.

Q. Have you submitted any in addition to those which have been returned to you?

A. I have.

Q. How many?

A. Approximately about 50.

Q. Do you have the proof strips for those 50?

A. I have not.

Q. Where are they?

A. They will be sent from the Grand Lodge as soon as the proof strips have been finished and the stencils cut for union cards.

Q. What are these proof strips? Just tell me.

A. These proof strips, I can probably explain it; I could show you what a union card is like, and it will show exactly what the proof strips are, the same as on here.

Q. Do you have any blank union cards?

A. No, I have no blanks like that whatever. I requested 50 blanks so the name could be typed in on each member, until I got the card numbers—

Q. The proof strip is a carbon or a duplicate part of this membership?

A. That is right; the name, address, ledger number, and Lodge number.

Q. You can't leave this for the purpose of the record, can you?

1810 A. Well, I have last month's.

Q. There is one for each month?

A. There is, and they are identical, except the color.

Q. There is a different color for each month?

A. That is right.

Q. Except the name, the month, and color, the cards are identical?

A. They are.

Mr. Rissman: I ask that this be marked BOARD'S EXHIBIT NO. 37, and I offer this in evidence.

Mr. Lamfrom: For what purpose?

Mr. Rissman: If the Examiner please—

Mr. Lamfrom: Wait a minute. It is objected to as incompetent, irrelevant, and immaterial, and as establishing nothing here.

Mr. Rissman: This is offered for the purpose of indicating the type of card described by the witness and the type of sheets as described which are sent to him by the national office of the union, indicating the number of members whose applications have been received in that national office from this local.

Mr. Lamfrom: I still make the same objection, take the same position I did before.

Trial Examiner Batten: It will be received.

1811 (Thereupon the document above referred to was marked as BOARD'S EXHIBIT NO. 37 for identification and received in evidence.)

Q. (By Mr. Rissman) So that with the 50 cards that have been submitted recently and the number that have already been returned to you as having been acted upon by the national officer, what is the number of signed application cards

that have been submitted from your lodge of Falk Employees?

Mr. Clark: Just a minute. Will you please read that question? I did not get it.

(The question was read.)

The Witness: A. 622.

Q. (By Mr. Rissman) Together with the 50, how much would that make?

A. That will make about 677.

Q. With the exception of the last 50 that have been sent, you have the other cards in your possession?

A. The 622, yes.

Mr. Rissman: That is all.

Cross-Examination.

Q. (By Mr. Engelhard) Mr. Meindle, these figures you have given us today are as of what date?

A. These application cards, every application card that the figures have been given for here, were all made prior to June 1, 1937.

1812 Q. And what was the situation on May 5th when Mr. Adelman made the demand upon the Falk Corporation at the Eagles' Club for collective bargaining rights?

A. The number of applications on May 5, 1937, was just about the same as it is at the present time, as after the denial was made to grant bargaining rights to the Amalgamated Association, and there have been very few, if any, applications at all for membership in the Amalgamated Association.

Q. Well, do you know the precise number of applications that were on hand on May 5, 1937, the precise number?

A. There were no application blanks sent back from the Grand Lodge at that date; they were still at the Grand Lodge waiting for proof strips to be cut and the stencils to be cut.

Q. Well, answer this question: Do you know how many of them were at the Grand Lodge on that date?

A. There were 600, and, I believe it was five, cards at that time.

Q. 605?

A. About 605 cards.

Q. Now, you say "around 605." Don't you know the exact number?

A. No, I do not.

Q. Of applications?

A. No, I do not.

Q. You were present at the meeting on the 5th of May?

1813 A. I was.

Q. And there was no claim made at that meeting that your organization represented a majority of the employees at the Falk Corporation, was there?

Mr. Rissman: I object to that question, if the Examiner please. We did not go into it on the direct examination of this witness, and we have introduced here a transcript of testimony, at the suggestion of counsel, that contains everything said at that meeting of May 5th.

Trial Examiner Batten: Well, I have read over that transcript, but I don't know as I really can recall how much really was covered at that meeting.

I see no objection to the witness answering if he recalls what happened at that meeting.

Mr. Rissman: May the question be read to him, please?

Trial Examiner Batten: Yes, read the question.

(The question was read.)

The Witness: I don't know if there was or not. I don't believe there was.

Q. (By Mr. Engelhard.) Well, you know, don't you, Mr. Meindle, that your organization did not represent a majority of Falk employees at that time? You know that as a matter of fact, don't you?

Mr. Rissman: I object to the question, as the preceding question was entirely different, as to what occurred at

1814 that meeting.

Mr. Engelhard: Well, here is a man who comes in and gives facts as to what the situation was on May 5, and now I am cross-examining him to see what the basis of his opinion is.

Trial Examiner Batten: Well, I see no objection to his answering.

As I understand, the question is, Didn't this man know, as a matter of fact, that on that date they didn't represent a majority?

Now, if he knows, he may answer.

The Witness: A. I can't answer that question because at that time no other records of the other lodge were available, and, of course, we not knowing whether we had a majority or they had a majority—

Q. (By Mr. Engelhard) Just a moment. What other lodge do you speak of?

A. This other union.
Q. You mean the independent union?
A. That is what they call it.
Q. Well, if you determined whether or not you represented a majority of the Falk employees, would you depend upon what the other organization has, to determine that?
Mr. Rissman: I object to the question, Mr. Examiner.
I am going to object to any testimony dealing with that
1815 May 5th meeting. It was not gone into on direct examination of this witness at all.
He was asked a few questions, the number of employees who designated his lodge, the type of work at that plant, who were eligible for membership, and we did not go into any discussion as to what the demands were for bargaining on May 5th, at the May 5th meeting.
The facts are here, and there is no necessity for going into any other understanding or any other facts.
Mr. Engelhard: Mr. Rissman, may I ask you this question: Your purpose in putting Mr. Meindle on this morning was in order to prove the allegation of the petition, was it not, that this C. I. O. has a majority of the employees of the Falk Corporation? Wasn't that the reason you put him on?
Mr. Rissman: The record will indicate the reason for which he was put on the stand.
Mr. Engelhard: Won't you answer my question?
Mr. Rissman: If you understand that was the reason, then you meet that issue.
Mr. Engelhard: That is why I am cross-examining him.
Mr. Lamfrom: What members of the other organization have—
Trial Examiner Batten: I think he may answer that, to explain the previous statement. As to what relationship that has, that is—
1816 The Witness: They claimed a majority around May 1st, they claimed 900 and we claimed over 600; 9 and 6 are 14; and there were only about 1,300 employees at the plant; so you can't claim a majority with them very much.
Q. (By Mr. Engelhard) Precisely. Now, do you know whether or not there have been duplications?
A. That I don't know.
Q. Don't you know, as a matter of fact, that some of the men had membership in both organizations?
A. No one ever told me they had.
Q. Don't you know that some men hold cards in both organizations?

A. Nobody ever told me that. I don't know; I haven't seen their cards or anything. Our cards and their cards have never been duplicated, so I can't answer that question.

Q. Now, do you know how many of the applications that were made for membership in your organization have been subsequently—Strike that.

Do you know how many applicants for membership in your union have subsequently made application in the independent union?

A. I do not.

Q. You don't know if there are any?

A. I don't know if there are any.

Q. Do you know whether any of the members of the
1817 independent union subsequently made applications in your union?

A. No, I don't know.

Q. You don't know of a single employee who left one union and joined the other?

A. No one ever told me that they left our union or their union, and I have not had one application withdrawn from our union.

Q. Now, as I understand your testimony, on May 5, 1937, the largest number that you can account for is 605?

A. Approximately; yes, sir.

Q. Now, when you say "approximately", how nearly correct is that figure?

A. Well, within a few.

Q. Then give me the lowest number that you would be willing to swear to.

A. Possibly about 585 or 590.

Q. Now, is it 85 or 90?

A. Suit yourself; I don't know which, one or the other of them is possible.

Q. That would be the lowest number you would be willing to swear to?

A. That is right.

Q. And what is the highest number you would be willing to swear to.

A. I believe 610 or 615.

1818 Q. But the fact is you don't know whether you had 585 or 615, anywhere between those two numbers?

A. Anywhere between those numbers.

Q. Do you know how many persons were employed at the plant on the 15th of May who were eligible to your union?

A. Well, according to the figures that were given around May 1, I would say that there would be about 800 eligible.
Q. To join your union?
A. To join our union.
Q. 800?
A. About 800.
Q. Do you know how many people were employed at that plant who were eligible to join the independent union under its rules and regulations?
A. Well, possibly about 1,000, probably more. I don't know what their rules and regulations are.
Q. Now, Mr. Meindle, so far as you, as an officer of Local 1528, is concerned, you do not know whether or not on the 5th of May the C. I. O. membership was a majority of the workers in the Falk plant who were eligible to join your union?
A. Taking in the whole plant, including the office—
Q. I say, those who were eligible to join your union; do you know, as a matter of fact, whether or not you had a majority of that type of employees?
A. I would say "yes", we did have that majority.
1819 Q. That is just based upon a surmise, is it not?
A. Not according to the men that were working in the plant, no.
Q. Well, did you get your information from the persons you talked to in the plant?
A. No.
Q. From whom did you get your information as to the number of employees in the Falk Corporation on May 5th?
A. Well, I worked there; I am a pretty good judge of how many fellows work and who do not.
Q. Well, how many worked there on May 5th?
A. I would say there wasn't over 800 in the plant proper that would be eligible to our union.
Q. Did you count them?
A. I did not.
Q. Then how do you know who was on the pay roll?
A. Well, I will tell you why. Mr. Green gave the figures this morning of just how many in all three machine shops on the day shift as 300 men.
Q. What date did he give those figures?
A. That was the day shift, that was the work he said.
Q. That was in connection with a period of time—that was an old period of time?
A. No, that was talking about the present.

Q. Don't you know he was not talking about the
820 present, that he was talking about the shift in the machine shop at the time Mr. Kinch worked there?

Mr. Rissman: The record will show that.

Trial Examiner Batten: I don't assume that this witness can testify as to the exact number that were employed there, Mr. Engelhard. I assume that, probably, is just his best guess.

Mr. Engelhard: That is what I assume; it is his best guess.

Q. (By Trial Examiner Batten) Is that right?

A. That is right.

Q. You never went around and counted each individual man?

A. Well, that would be kind of hard.

Q. In other words, your observation of being around the plant is that there were about 800 men there?

A. That is right.

Mr. Rissman: The company is in a position to introduce the facts as to the number of men at that time.

This man gave the fact as to the number in his union; whether or not he thought them a majority does not make it so.

Mr. Engelhard: I am asking him as an officer of the union whether he knew they had a majority.

There is an allegation in the complaint that the C. I. O. had a majority and that we were legally obligated to recognize that union as the exclusive bargaining agent.

821 Trial Examiner Batten: I think, Mr. Engelhard, that the witness testified clearly that it was from his observation.

Mr. Engelhard: Yes.

Trial Examiner Batten: As it was around the plant that he thought there were 800 men.

Mr. Lamfrom: We will introduce evidence of the number of men at the plant on May 5th.

Trial Examiner Batten: What is that, Mr. Lamfrom?

Mr. Lamfrom: I say, we will introduce evidence of the number of men.

Trial Examiner Batten: I think that settles it. I don't imagine there is any employees here who can testify to the number of men on the pay roll.

Q. (By Mr. Engelhard) Have you Mr. Landry's application card?

A. Mr. whose?

Q. Mr. Landry's.

MICRO CARD
TRADE MARK ®
22
39
MATTHEW BENDER & COMPANY
1382
56
microcard

A. I believe I have it here.

Mr. Engelhard: I ask at this time, Your Honor, that that application card be withdrawn and marked as an exhibit.

Q. (By Trial Examiner Batten) Let me ask you this question: Are these records you have with you here public records?

A. They are not; they are confidential records.

Q. Are they open for the inspection of the public or anyone else?

1822 A. They are not.

Trial Examiner Batten: Well, if they are confidential records I certainly shall not require you to produce them any more than I would require the company or the corporation to produce any of their confidential information; so I certainly will not require him to produce any of his records.

Mr. Engelhard: He need not produce them, but will you get out Mr. Landry's card so that we can get the date of his application?

Trial Examiner Batten: I have just said I would not require him to produce any of them.

Mr. Engelhard: He need not produce them; all I want is the date of Mr. Landry's application.

Trial Examiner Batten: Ask him whether he objects.

Q. (By Mr. Engelhard) What is the date of Mr. Landry's application?

A. If Mr. Landry wishes it to be made, I will grant it; otherwise, I will not.

Mr. Lamfrom: That is out of the ordinary; that is a rather novel situation.

Trial Examiner Batten: There is nothing novel about it because the Board has found by experience that any labor organization, if it does not care to disclose the names and confidential records of its members, does not have to do so, because the Board has found through experience that that

1823 is one of the things oftentimes that an employer very much desires.

Mr. Lamfrom: We know Mr. Landry is a member of this organization; we know he is a member of your organization.

Trial Examiner Batten: If it is a confidential record, he does not have to disclose any of it, unless he so desires, and the trial examiner will not request him to do so.

Mr. Lamfrom: What I am asking is that the union representative here disclose in the record the date of Mr. Landry's application.

Mr. Landry was asked when he signed the application and he couldn't give any definite time.

Trial Examiner Batten: Mr. Landry—

Mr. Landry: Yes, sir.

Trial Examiner Batten: Do you care to have the secretary disclose any information on your card?

Mr. Landry: No.

Mr. Lamfrom: Mr. Landry, do you object to having the date of your application disclosed?

Mr. Landry: At the present moment, I would.

Mr. Lamfrom: I move, Mr. Examiner, that the witness be required to disclose, if he knows; or if he can ascertain the information from any source that he has available, the date of Mr. Landry's application to become a member of the C. I. O.

Mr. Rissman: If the Examiner please, the Examiner has ruled on that matter, and I further object to the question on the ground it is incompetent, irrelevant, and immaterial, as to what date Mr. Landry joined the C. I. O., for any purposes of this complaint and this hearing.

Mr. Lamfrom: It becomes very material on the question of Mr. Landry's veracity on the witness stand yesterday or the day before, he testified he left the meeting of the Independent Union and went over to the C. I. O. sometime in April and signed an application card to the C. I. O.

I submit, if the Examiner please, that the respondent here is denied a right that is a recognized right in the courts of law and equity of the United States, and that the production of information which a witness has, which is not what is known as privileged bit of information, when it is necessary in the interest of justice to establish a fact in the trial of an action or proceeding of this kind, that if that right is denied, this respondent is deprived of a substantial right contrary to law.

Mr. Rissman: That is a beautiful speech, but it does not mean a thing.

First, he misstates the record. Mr. Landry did not testify as counsel indicated.

Secondly, no right is being denied the respondent in this matter because it is entirely immaterial as to the date of his application for membership.

I think the Examiner having ruled on the question, it should not be necessary for us to go into it any further.

Mr. Lamfrom: May I ask a question to get a little light on this situation?

1826 What is the rule that establishes this to be a confidential record, on the ground that it is not a public record?

Trial Examiner Batten: The Trial Examiner has no further remarks of any kind to make except those that are now in the record.

Mr. Lamfrom: Well, I understand our motion to have this witness directed to inform us either from his records or any other information that he has, documentary or otherwise, the date of Mr. Landry's application into this union is denied?

Trial Examiner Batten: The Examiner has passed on that question.

Mr. Lamfrom: I do not want to be discourteous to the Examiner, but I want to be sure I understand the ruling.

Trial Examiner Batten: Will you go back please to the beginning of this matter and read the record.

(The record was read as directed.)

Mr. Engelhard: Now, I ask that the officer of this union disclose, if he knows, the date of Mr. Landry's application.

Mr. Rissman: I object to that question as entirely immaterial as it is stated. The Examiner has already ruled that the witness need not disclose any information about Mr. Landry's application.

Trial Examiner Batten: He may answer the ques-

1827 tion if he knows, without any reference to the card, as to when it was.

My ruling pertained to the production of the card or the disclosure of the information on it.

Now, if he knows of his own information—

Mr. Rissman: I object to the question on the ground it is immaterial.

Q. (By Trial Examiner Batten) Do you know the date of Mr. Landry's application?

A. I do not. The cards are here exactly as I have got them back, I never went through the cards or never filed them alphabetically.

Mr. Engelhard: Then I ask that this officer that is on the stand inform himself of the date of Mr. Landry's application without disclosing the card.

Trial Examiner Batten: Well, I think that is substantially the same thing that the Examiner has ruled on.

Mr. Engelhard: That, your Honor, certainly does not disclose any privileged information, the date of a man's application, there is nothing holy about that.

Trial Examiner Batten: Mr. Landry stated he did not care to have the officer disclose any information on his card, and that is my ruling and I don't intend to change it.

Q. (By Mr. Engelhard) Will you produce the cards showing the membership that you had on May 5th?

Mr. Rissman: I object to the question as entirely
1828 immaterial, whether he produces them or not.

Trial Examiner Batten: Well, I think the witness has a perfect right to answer the question, whether he will or not.

The Witness: These cards can be shown and accounted for if permission is got from the International Secretary at Pittsburgh, Pennsylvania. These cards are his property; they are left in my custody, and I cannot show them cards unless permission is gotten from him.

Q. (By Mr. Engelhard) But you could produce the cards you have now in your possession right now in this court room.

A. I have them in my possession.

Q. But you refuse to produce them?

A. I refuse to produce them.

Mr. Lamfrom: I ask that the Examiner require "Mr. Landry" to produce the membership cards of the union showing the membership on May 5th or thereabouts, 1937.

Trial Examiner Batten: The Examiner has previously ruled on the same question.

Mr. Clark: You mean "Mr. Meindle"?

Mr. Lamfrom: I beg your pardon.

Mr. Clark: You mean "Mr. Meindle"?

Mr. Lamfrom: I mean, will the Examiner require Mr. Meindle to produce the membership cards showing the membership of this union on or about May 5th, 1937.

1829 Mr. Rissman: I object to the statement. The Examiner has indicated his ruling with reference to the records of the union, and the witness has stated that he refuses to produce them without authority from the General Secretary in Pittsburgh.

I further object for the reason that these records were not subpenaed by the respondent.

Trial Examiner Batten: Well, that objection does not amount to anything, Mr. Rissman. The records are here and

the witness has them on the stand, so that, as to that objection, I don't think there is anything to that objection, but I have made my ruling with respect to the union records and it stands as I have made it, and I don't intend to make any other ruling on the matter.

Q. (By Mr. Lamfrom) Have you the records of the membership—or the membership cards of the union showing the membership as of today with you?

A. As up to date?

Q. Yes.

A. No, I haven't.

Q. Do you have the cards showing the membership as of today in connection with these cards which are down in Pennsylvania? Is that where the head lodge is?

A. Yes, sir, that is right.

Q. You have those cards, membership cards with you?

1830 A. The applications and proof strips.

Mr. Lamfrom: Yes. I ask that the Examiner direct the witness to produce the membership and other records indicated by the witness' testimony, showing the membership in number from the best evidence and sources and records of the union, that he produce them now.

Mr. Rissman: The same objection.

Trial Examiner Batten: The same question has been asked the witness several times and I have made the same ruling. I have ruled with respect to these records, and that ruling stands.

Mr. Lamfrom: Then I move that all the evidence that this witness has given with respect to the number of members in this union during all the period covered by his testimony be stricken from the record, as not being the best evidence or best method, considering the fact that the records exist and can be produced and can be inspected and can be used for the purpose of cross examination, is no evidence at all.

Trial Examiner Batten: It may be stricken.

Mr. Rissman: I resist that motion if the Examiner please. The witness has testified from his knowledge as secretary of the union as to the number of members on these various dates and he has testified also from the application cards received by him from the employees of the Falk Cor-

1831 poration, which application cards he has with him, application cards that he has examined at one time or another, and has information indicating the number of cards there are.

Trial Examiner Batten: Well, the Trial Examiner has ruled on the motion.

Q. (By Trial Examiner Batten) May I ask you a question, Mr. Meindle?

A. You may.

Q. Is your organization willing to have an election in this plant supervised by the National Labor Relations Board?

A. I believe it would be. Permission would have to be had from the president, as I can't—

Q. Mr. Landry?

A. Mr. Landry.

Trial Examiner Batten: Mr. Landry, would your organization be willing to have the National Labor Relations Board conduct an "examination" in this plant?

Mr. Landry: An examination?

Trial Examiner Batten: An election.

Mr. Landry: An election?

Trial Examiner Batten: Yes.

Mr. Landry: I am quite certain they would be.

Trial Examiner Batten: Are there any further questions?

Q. (By Mr. Lamfrom) Would that be so, would your opinion as to whether or not the union would consent
1832 to an election in this plant supervised and conducted by the National Labor Relations Board, would that opinion be based upon the fact that it might also order on the ballot the Independent Union of Falk Employees?

A. I think that question was brought up and threshed out with a stipulation in the room over here—

Q. (By Trial Examiner Batten) The question is, Mr. Meindle, if the National Labor Relations Board determined that the Independent Union and the C. I. O. should both be on the ballot, would your answer be the same with respect to an election?

A. My answer I believe would be yes.

Mr. Lamfrom: May we ask, Mr. Landry, the president of the union, the same question?

Trial Examiner Batten: Mr. Landry, if the National Labor Relations Board as the result of hearing the evidence on this petition and complaint, were to issue its order or certify an election when necessary, and on the ballots were to appear the three organizations, the A. F. of L., the C. I. O., and the Independent Union, would your organization still be in favor of that election?

Mr. Landry: Perfectly agreeable.

Mr. Lamfrom: All right, that settles that.

Mr. Engelhard: Well, if that is the situation, Mr. Examiner, may it not be well for counsel representing all
1833 parties to withdraw with the Examiner now and see whether a stipulation can be entered into?

Trial Examiner Batten: No, I am not in favor of any stipulation at this stage of the proceeding.

I sat in on one conference at which I think counsel for respondent made a proposition which was very fair and reasonable at that time, but at this stage of the proceedings I would not be willing to listen to any kind of stipulation or settlement of this case.

Now, you may go to Mr. Clark, who is the Regional Director, and who has the right and authority to settle cases.

I am not here to settle cases; I am here to hear cases, so I would not care to enter into any proceeding for a settlement of the case.

Mr. Lamfrom: May it appear, Mr. Examiner, that the stipulation referred to that the respondent entered into was one over which—

Trial Examiner Batten: No, I said suggestion.

Mr. Lamfrom: Suggestion over which—really concerned a matter over which it would have no control.

Trial Examiner Batten: I realize that.

Mr. Lamfrom: But the National Labor Relations Board—

Trial Examiner Batten: I realize that.

Mr. Lamfrom: And that the respondent did not go back from that suggestion or stipulation, whatever you may
1834 call it.

Trial Examiner Batten: I did not mean to imply that the respondent had made a proposal, Mr. Lamfrom, which they later withdrew from.

I simply used that to indicate that at the beginning of the case there was a suggested proposal of settlement.

Mr. Lamfrom: That is right.

Trial Examiner Batten: But the Trial Examiner at this late stage of the proceedings does not feel that he should waste any more time.

Now, after five o'clock if you want to get in touch with Mr. Clark, the Regional Director, he probably would be glad to effect a settlement, but I am here for the purpose of hearing the evidence.

Mr. Lamfrom: Is he in the city?

Trial Examiner Batten : I understand he is back from his vacation today.

Mr. Engelhard: Now, let's see what is in the record. Do I understand that all the testimony Mr. Meindle gave regarding the number of people who belonged to his organization and what percentage they are, if any, of the number of employees, that is all stricken?

Trial Examiner Batten: Well, you know as much about the record as I do.

Mr. Lamfrom: That is perfectly clear, the Exam-
1835 iner's ruling is clear to me.

Trial Examiner Batten: Mr. Lamfrom made a motion to strike a certain matter from the record, and I granted his motion.

The Witness: Mr. Examiner, may I put in an addition on my answer to Mr. Engelhard?

Trial Examiner Batten: Which answer?

The Witness: About being agreeable to vote on an election?

Trial Examiner Batten: You may, if you have any statement.

The Witness: After a decision is handed down by the National Labor Relations Board we will then be agreeable to an election being conducted by the National Labor Relations Board, after their decision is handed down as to the respective names that will be on the ballot.

Q. (By Trial Examiner Batten.) In other words, if the National Labor Relations Board, as I said before, finds an election should be conducted and that on the ballot should appear the names of the three organizations, that election then will meet with your approval?

A. That is right.

Q. Well, if they find that only one name should appear on it, will it still meet with your approval?

A. That is right.

1836 Q. Or two names?

A. Or two.

Q. In other words, whatever the conditions attached to the order are, your organization will accept them?

A. That is right.

Mr. Rissman: If the Examiner please, this motion of Mr. Lamfrom that has been granted, does not as I understand, extend to any testimony of Mr. Landry today other than the number—

Trial Examiner Batten: Mr. Landry?

Mr. Rissman: Mr. Meindle, other than the testimony he has given about the number of people in his organization.

Trial Examiner Batten: Don't ask me to go back over the record. I cannot go back over the record.

Mr. Rissman: May I have the motion read?

Trial Examiner Batten: If you want to take a recess and have the reporter read the motion to you, all right.

Mr. Rissman: All I want was this motion.

Trial Examiner Batten: We will take a few minutes recess.

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed, gentlemen.

Q. (By Mr. Lamfrom.) Do you know how many men whose applications you now have in your file, whatever
1837 you want to call it, are not now employees of the Falk Corporation?

Mr. Rissman: I object. Just a minute.

I thought counsel had moved to strike all the testimony with reference to the number of members. This seems to be a bit inconsistent. I mean, if the testimony with reference to the number of members had been stricken, what difference does it make who are no longer employees.

Mr. Lamfrom: Well, you know many years ago a poet said, "Inconsistencies are a jewel."

If this is inconsistent, why, it is probably a jewel.

Mr. Rissman: Stick to the facts, and not poetry.

Mr. Lamfrom: I don't think it is inconsistent at all, Mr. Rissman. However, if Mr. Batten does not feel the question should be answered, of course he will rule that way.

Trial Examiner Batten: As far as I am concerned he can answer it. It may be a jewel, but if there is no objection to his answering it, he may answer.

Mr. Lamfrom: Well, I will put it differently—strike it out.

Q. (By Mr. Lamfrom.) Do you know how many members of the union, and by "union" I mean this union involved in this case, the C. I. O. union, are now no longer employed at the Falk Corporation?

A. Three, I believe.

Q. Three?

1838 A. That is all that I know of.

Q. That is your answer?

A. That is my answer.

Mr. Rissman: That is all.

The Witness: And they still belong to the lodge, because they have not withdrawn.

Mr. Rissman: That is all.

Q. (By Trial Examiner Batten.) Might I ask a question there, please?

A. Yes.

Q. How many was it you stated as of yesterday here, had filed applications or indicated a desire to join the C. I. O.?

A. We haven't the applications yet, but from the authority I have got, after this case is settled and a decision is handed down—

Q. Do you know how many actual application cards or these strips, whatever you call them—

A. Oh, I have strips here of 622; I have filed requests for about 50 more.

Q. What do you mean by "filed requests"?

A. Well, this here card, I will show you.

Q. Just tell me what you mean?

A. It is the union card. There have been cards lost in transit, the fellows have filed the cards but no union cards came back from them, no union cards, and as the rec-
1839 ords were being gone over I found that there was no union card issued for these men, and I made application for the union card for these men.

Trial Examiner Batten: That is all. Mr. Clark?

Mr. Lamfrom: That question you asked him with respect to application cards is not inconsistent with your ruling before, is it?

Mr. Rissman: Are you quoting poetry again?

Mr. Lamfrom: No, I changed my question. I merely asked something that is already within his own knowledge, or extracts from the application cards. I didn't go into—I withdraw that question.

Trial Examiner Batten: I don't know just what you mean.

Mr. Lamfrom: You know what you mean.

Trial Examiner Batten: I had no thought in mind of trying to put into the record something which I had stricken.

The Witness: Well, that question was asked and answered.

Trial Examiner Batten: Is that what you mean?

Mr. Lamfrom: I didn't think you knowingly had, but I was wondering whether the effect of the question was really in effect now overruling it.

Trial Examiner Batten: Well, I had no such thought in mind.

Mr. Lamfrom: That is perfectly clear now.

1840 Trial Examiner Batten: Mr. Clark.

Q. (By Mr. Clark.) When does a man become a member of the C. I. O.?

A. What?

Q. When does a man become a member of your organization?

A. The minute he signs his application card.

Q. Without paying any money?

A. Without paying any money.

Q. And if he signs an application for another organization does he cease to be a member of yours?

A. He does not.

Q. He can belong to your organization and belong to another one, too?

A. He can unless he is suspended, transferred or resigns; the reason of that withdrawal, or any cause like that—

Q. Do you know whether he agrees in the application not to make application for membership in any other organization?

A. He does not.

Q. He can belong to another rival labor organization and still be in good standing in yours?

A. I didn't say good standing.

Q. What do you mean?

A. He can still belong to—

Q. You have two types of members, one just belongs and one that is in good standing?

1841 A. No, we have some that a lot of them consider very good standing, but who are not in good standing.

Q. Is a man in good standing if he never pays any dues?

A. Yes, sir.

Q. Is he a member although he does not pay any dues?

A. Yes.

Q. The minute he signs an application he becomes a member of the C. I. O.?

A. Will you repeat that?

Q. The minute he signs an application he becomes a member?

A. That is right.

Q. And unless he is suspended, dies or resigns, he is always a member of your organization?

A. Always.

Q. Now, is it your idea, Mr. Meindle, that there were 1400 employees in the Falk plant at the time in May, May 5th?

A. No.

Q. How many do you think there were?
A. 1300.
Q. 1300?
A. 1300.
Q. Now, on direct examination you said that the independent union claimed 900 and you claimed 600, and that the total was 1400?
A. That is right.
1842 Mr. Rissman: That was on cross examination.
Q. (By Mr. Clark.) You mean that?
A. Yes.
Q. Does 9 and 6 add up to 14?
A. That is right.
Q. (By Mr. Rissman.) Do you want to change your answer now?
A. Yes, I will change that answer, I will change that answer to 1500.
Q. (By Mr. Clark.) Your arithmetic was a little bit bad?
A. Sometimes.
Q. Now, Mr. Meindle, on April 23rd have you any recollection of how many members belonged to your organization?
A. No.
Q. I mean April 23rd this year?
A. No.
Q. You have no recollection at any particular date as to how many applications you had filed?
A. Yes, I have, around May 5th.
Q. That number was 622?
A. No.
Q. How many?
A. It was anywhere between 585 and I believe 610, or 615.
Q. Do you have rules and by-laws for that organization?
A. Yes, we have rules and by-laws.
Q. Do you have a copy here?
1843 A. No, I haven't.
Q. Is there a copy available?
A. There is not.
Q. You mean there is not any available, or you won't produce it?
A. I said there is not any available.
Q. You have never read them?
A. I never have.
Q. Have you ever had any?
A. No, the rules and by-laws, we follow our ritual.

Q. You mean ritual, I take it?
A. Ritual.
Q. Now, where does the ritual come from?
A. From the Grand Lodge at Pittsburgh.
Q. Do you have a copy of that?
A. Yes, I have.
Q. Don't you have a constitution?
A. The constitution, we follow our ritual.
Q. So that the only rules that govern your organization at the Falk plant is the ritual?
A. The ritual, and as the laws are laid down from our Grand Lodge.
Q. What do you call those?
A. They are just parts of the Grand Lodge, they are just branches of the Grand Lodge.
1844 Q. The rules as laid down by the Grand Lodge, what do you call those?
A. Them are what we follow.
Q. What do you call them?
A. Just rules, all those rules that will be set down by the Grand Lodge will finally be wove into what you call the rules and by-laws.
Q. So that at the present time your organization has no constitution defining who is eligible for membership?
A. Except as our own local wants to accept them.
Q. Is your local the judge as to who shall belong?
A. It is our local, our own local, yes.
Q. No matter what the Grand Lodge says, your local governs?
A. If we don't want to accept a member we don't accept him.
Q. No matter what his capacity is with the plant?
A. Yes, we have laws regarding who is eligible and who is not.
Q. Well, where are they from?
A. They are from Pittsburgh.
Q. Do you have a copy of those?
A. No, I haven't.
Q. As a matter of fact, Mr. Meindle, this organization of course has been operated by people other than employees of the Falk plant at their meetings, hasn't it?
A. It has not.
1845 Q. Well, who tells you what to do?
A. Nobody.

Q. And you have no constitution to follow?
A. No.
Q. All you have to go by and all you have to be governed
y is the ritual?
A. The ritual and rules as they are handed down from
ne Grand Lodge.
Q. I am asking, Mr. Meindle, do you have copies of those
ules as they are handed down?
A. Yes.
Q. What form are they in?
A. Writing.
Q. Are they printed?
A. They are typewritten.
Q. You get those from time to time?
A. I do.
Q. And they may be changed from week to week?
A. They may.
Q. And your lodge has nothing to do with making those
hanges?
A. We would have if we requested any.
Q. But you haven't requested any?
A. We haven't requested any.
Q. Now, who determined who was eligible for mem-
346 bership in your organization?
A. As to the foremen, assistant foremen, men in a
upervisory capacity, that is handed down by the Grand
odge. The workers of our plant, we judge that ourselves.
Q. You mean you judge who is a foreman and who is not?
A. We know, we don't judge, we know that.
Q. Yes, so the local has nothing to do with who was eligible
r membership in this organization?
A. Yes, request can be made to the Grand Lodge to hand
own a decision on that.
Q. Have you made any such request?
A. No, we haven't, we haven't found it necessary.
Q. You accepted the rules that certain people were eligible
membership in your local?
A. We did not make no rules whatsoever.
Q. I understand, and you have none to be guided by?
A. Yes, rules to be guided by.
Q. That is rules that you said come from Pittsburgh?
A. That is right.
Q. And you have no constitution?

A. We have no constitution as yet.
Q. And you have no by-laws?
A. No by-laws except our ritual.
Q. Now, by this ritual you mean what must be gone through with to take in members?
1847 A. Yes, and line up officers.
Q. Is that a part of the ritual?
A. That is a part of the ritual.
Q. So you have officers in this organization?
A. Sure.
Q. Now, did I understand that you said that you know of no man who joined the Independent Union ever making application for yours?
A. I do not.
Q. You do not know of anyone?
A. I do not know.
Q. Who has joined?
A. I do not.
Q. You know of no one who has changed from your organization to the Independent?
A. You just asked me that question.
Q. Then from the Independent to you?
A. No.
Q. Are you in charge of these applications?
A. I am.
Q. Do you know a man by the name of John Wolf?
A. I don't know.
Mr. Clark: I guess that is all.
Q. (By Mr. Engelhard.) Mr. Meindle, who decided that the draftsmen were not eligible to join your union?
1848 A. Who decided that?
Q. Yes.
A. We decided among ourselves with the aid of Mr. Adelman.
Q. Who decided that the clerical help was not eligible to join your union?
A. We decided that among ourselves with the aid of Mr. Adelman.
Q. Who decided whether the timekeepers were eligible to join your union?
A. That also was decided among ourselves with the aid of Mr. Adelman.
Q. The draftsmen were not consulted about it?
A. They were not.

Q. And the clerical help was not consulted about it?
A. They were not.
Q. And the timekeepers were not consulted about it?
A. They were not.
Q. They could not join your union if they wanted to?
A. That is right.
Q. I understood that in reply to a question from Mr. Clark you said you do not know what the number of members in the C. I. O. were on the 23rd—the number of members was on the 23rd of May—the 23rd of April, I mean?
A. No.
Q. You haven't the least idea?
1849 A. No.
Mr. Engelhard: That is all.

Redirect Examination.

Q. (By Mr. Rissman.) Mr. Meindle, will you tell us why is was decided to exclude the employees from the different departments just mentioned by Mr. Engelhard?
A. Yes, all of the clerical workers, the draftsmen and timekeepers' problems are so much different than ours, it being a different type of person altogether, it would be rather hard for us to go and bargain for them, where at the shop proper it is so much easier because we understand each other's problems so much better than we would understand theirs.
Mr. Rissman: That is all.
Trial Examiner Batten: Mr. Clark?
Mr. Lamfrom: Well, do you understand the general obligation,—oh, excuse me, pardon me, Mr. Clark.

Recross Exdmination.

Q. (By Mr. Clark.) Mr. Meindle, do you know of any men who are working in these various departments that were excluded from membership, that you have just related, who were approached with applications and asked to join?
A. I don't know?
Q. There may have been some?
A. There may have, I don't know.
1850 Q. Now, when you say these men that you excluded were a different type person, what do you mean?

A. Well, their thinking is altogether different than ours; their hours are different from ours; they act different than we do, and every thing else.

Q. Your organization only wants to represent people in the production department at the Falk plant, is that right?

A. In the plant proper.

Q. What do you mean by that?

A. I mean all departments outside of the draftsmen, engineers, main office and timekeeper's office.

Q. Do you feel that all of those people think alike?

A. The majority of them do, yes.

Q. But you don't know which way they think.

Mr. Rissman: I move that be stricken.

Trial Examiner Batten: On what question, Mr. Clark?

Mr. Clark: A lot of them.

Q. (By Mr. Lamfrom.) Well, your union is formed for the purpose of collective bargaining with the employer, is it not?

A. That is right.

Q. And to get whatever benefit in a legitimate way the union can get for its members, is that right?

A. That is right.

Q. And primarily in your relationship with the em-
1851 ployer you are concerned with employment, wages and working conditions, aren't you?

A. Well, it is kind of hard for a fellow working in a shop—

Q. Now, are you concerned with those matters?

Mr. Rissman: He started to answer.

Mr. Lamson: He is anticipating.

Mr. Rissman: Let him finish his answer.

Mr. Lamfrom: The question—

Trial Examiner Batten: Read the question.

(The record was read.)

The Witnesss: Well, their problems are so much different than ours.

Q. (By Mr. Lamfrom.) I am talking about your purpose.

A. My purpose?

Q. Yes.

A. My purpose is to bargain and try to bargain for my fellow workers for better conditions, hours and wages, stuff like that.

Q. Yes. Now, what is there that is different with reference to bargaining for those same objectives for the draftsmen?

A. Well, there is a lot of difference.
Q. What are they?
A. Well, we are altogether a different type of people than they are.
1852 Q. I know, but they work for wages, don't they?
A. They probably work for wages or work for a salary.
Q. Whatever it may be, for remuneration, is that right?
A. Here is the thing—
Q. Is that right?
Trial Examiner Batten: Let him go ahead.
Mr. Lamfrom: But when I say "Is that right", he says "Here is the thing"—
Trial Examiner Batten: He was going on and explain. Go ahead.
The Witness: We have one way of thinking and they have another way. They come through the shop and they don't even look at us, we are dirty, we get dirty.
Q. (By Mr. Lamfrom.) You are a little bit class-conscious?
A. No, I am not class-conscious; I have some very good friends working in the office that are not afraid, but the majority don't want to recognize you because you are a worker.
Q. These same men that apparently don't want to recognize you, or some of them, they work for wages or salary?
A. Yes, sir.
Q. And they work a good number of hours?
A. That is right.
Q. And they work under certain conditions?
A. That is right.
1853 Q. Why is it not possible for your union to represent these employees in the other crafts who are, after all, attempting to achieve the same object that you are, namely, better wages, better working conditions and more satisfactory hours?
A. We just don't want to bargain for them.
Q. You could bargain for them?
A. We don't care to bargain for them.
Q. I say, if you represented—pardon me, Mr. Rissman—if you represented the entire Falk Corporation employees you could, as an entity, bargain for them, couldn't you?
A. I don't know how successful it would be if we did.

Q. Why do you say you don't know how successful it would be if you did, why do you say that?

A. Because without understanding their conditions and our conditions, their way of thinking and our way of thinking, I do not believe we could agree on anything that they would ask us to go and bargain for.

Q. Well, you tell Mr. Landry, don't you, the different conditions that exist in the plant, that you want him to bargain with the employer about, don't you?

A. Yes, but we see that condition.

Q. Don't you—

A. We see that condition; we don't see their condition.

Q. All right. Why couldn't these other crafts tell Mr. Landry what their conditions were and have Mr. Landry
1854 or your organization bargain for them?

A. Because we don't see their conditions.

Q. Why couldn't you see their conditions by going around through the drafting room and the clerical force and the other units here?

A. Well, I will tell you, if you are full of sand, dust and dirt, and everything else, I don't believe the office would want you to walk through that office looking over you there, and ask them questions about this and that, and that is why it would be hard.

Q. They could tell you what their conditions were.

A. How would we know they were not asking something we can't get.

Q. Before you make a demand upon the employer do you want to be pretty sure the demand is going to be met?

A. We know what they are asking for in the shop, but we don't know what they are asking—what they would ask us to do for them.

Q. You could use your best endeavors to get what they requested, could you not?

A. Just like someone else's conception of working upon air conditioning machinery in the machine shop because the air is dry, they may come down and tell us they want ice water because they are thirsty.

Q. You could use your best endeavors to represent
1855 the draftsmen, go to Mr. Falk or some member of the company and say, "Now, Mr. Falk, you are paying your draftsmen so much and we find that Allis Chalmers Company pays so much and they work under the same general conditions, as we are informed, and therefore we would like

to discuss with you the rates, wages and salaries for your draftsmen," you could do that, couldn't you?

A. No, I don't think we could.

Q. You couldn't do that for any other crafts but the plant employees?

A. That is right.

Q. And you don't want to?

A. I wouldn't say that, I say we just can't do it.

Q. A little while ago if I understood your testimony you didn't want to?

A. Well, we don't want to.

Mr. Lamfrom: That is all.

Q. (By Mr. Rissman.) The reason you don't want to is because you feel you can't?

A. Because we can't bargain for them successfully as we can for the workers themselves.

Mr. Rissman: That is all.

Q. (By Mr. Lamfrom.) Well, do you feel, however, that bargaining for them would interfere with your ability to bargain for your own employees?

1856 A. Yes, I think it would, because we don't understand their problems.

Q. I mean if you didn't understand their problems but acquired as much information as you could concerning their problems and you did bargain for them, how would that interfere with you in bargaining for your own crafts?

A. I don't believe our craft would want to bargain for them.

Q. Answer my question, if you did bargain for these other crafts how would that interfere with bargaining for your own crafts?

A. Well, that question I can't answer.

Mr. Lamfrom: I didn't think you could. That is all.

Q. (By Mr. Clark.) Mr. Meindle, the reason you say you don't feel you could do a good job representing the draftsmen and other people is because you are not familiar with their problems, is that right?

A. That is right.

Q. And the reason you feel you can successfully represent your own group is because you, as a worker, in that group, know of their individual problems?

A. That is right.

Q. And you feel that you don't need any outside suggestions and help to deal with—or to tell you what your problems are?

Mr. Rissman: I object to that question as entirely
1857 immaterial, what he feels. He has testified as to the facts at the plant.

Trial Examiner Batten: I think he may answer the question.

What do you mean by "outside"?

Q. (By Mr. Clark.) Anyone outside of the group that is eligible at the Falk plant.

Trial Examiner Batten: You mean a business agent?

Mr. Clark: Yes.

Trial Examiner Batten: Or somebody representing the International Union?

Mr. Clark: Yes.

Q. (By Trial Examiner Batten.) Do you understand the question?

A. I understand the question.

Trial Examiner Batten: You may answer.

The Witness: If we want advice we go and ask Mr. Adelman for advice or whoever is in charge of the office here in town, and if we don't need advice, if we can handle the problem without any advice, we handle it ourselves.

Q. (By Mr. Clark.) Well now, what is there about your problems at the Falk plant that Mr. Adelman is familiar with?

A. Well, I don't believe there is any problem in our plant itself that Mr. Adelman is familiar with.

1858 Q. He gets his information from you?

A. More or less of it, yes; if it is any information about the plant he gets it from us.

Q. And all the problems that you have to deal with are similar to yours and other officers of your organization?

A. That is right.

Q. And still you feel that you should go to an outsider to ask him what to do about it, is that right?

A. If we want to go ask we will, and if we don't, we won't.

Q. Why don't you feel competent to represent the draftsmen who might come to you and tell you what their problem is?

A. I answered that question already.

Q. I don't believe you did. What was your answer?

Mr. Rissman: Answer it then.

A. Difference in conditions and difference in the two types of people.

Q. (By Mr. Clark.) Well, the only information you might

get if you did represent the draftsmen would come from them themselves?

A. It would come from them themselves.

Q. So that you would be then in the same position that Mr. Adelman is now for your group?

Mr. Rissman: I object to that question.

Trial Examiner Batten: I don't see any objection to letting him answer.

1859 Mr. Rissman: We don't know what Mr. Adelman's experience is in the matter.

Trial Examiner Batten: Well, I suppose if he wants to go to somebody for advice he can go. The lawyers certainly would not do very much business if nobody came to them for advice.

The Witness: Will you read the question, please.

(The question was read.)

Mr. Rissman: The form of the question is bad.

Q. (By Trial Examiner Batten.) Well, do you understand the question, Mr. Meindle?

A. Well—

Trial Examiner Batten: Read the question, again, please.

(The question was re-read.)

A. No.

Q. (By Mr. Clark.) How would it differ?

A. What?

Q. How would it differ?

A. Because Mr. Adelman is a fellow that has worked in plants and understands the conditions and problems confronting the workman. He does not understand the problems and conditions that confront office workers. We would be in the same boat as he would be if we wanted to bargain for the office, we don't get in the office and we don't know what their conditions are.

1860 Q. What plant similar to the Falk plant has Mr. Adelman worked in?

A. I believe he has worked in plants in the east.

Q. Do you know the name of them?

A. I have heard them, but I don't recall the names of any.

Q. Did he tell you that?

A. He has mentioned the fact, yes.

Q. Did he name the plants?

A. He did name the plants at that time.

Q. But you don't recall them?

A. I don't recall them, no.

Q. You don't know what work he did?

A. No, I do not.

Q. But you feel that the reason for having excluded the office people and draftsmen at the Falk plant was because you are not familiar with their problems?

A. That is right.

Q. Wouldn't you feel that if they had representatives on the bargaining committee they could make known their problems and wants and you could deal for them?

A. No.

Q. Why?

A. Because we don't know what their conditions are. They can tell us their conditions, but we don't know because we don't get in the office and see their conditions.

1861 Q. If they had a representative on the bargaining committee who were familiar with their own problems don't you think you could then do a successful job of bargaining for them?

A. No, I don't think so, because I think everybody should be familiar with the other's conditions.

Q. Do you feel that everybody in your organization is familiar with the conditions under which every other member of your organization works?

A. That is right.

Mr. Clark: That is all.

Mr. Rissman: That is all.

Q. (By Trial Examiner Batten.) Mr. Meindle, what do you have in your organization in addition to officers?

A. Steward system.

Q. By "steward system" you mean you have a man in each department?

A. Yes.

Q. Who—

A. In some departments we have probably three or four, probably five, depending upon the number of men.

Q. Do you have such a thing as an executive board?

A. Our executive board shall be the president, vice president and the secretary, that would be the executive board.

Q. Well, do you have any such thing as trustees?

A. No.

1862 Q. Or directors?

A. No.

Q. Well, who elects the officers in your organization?

A. The men, themselves.

Q. The men?

A. Yes, sir.
Q. And who elects the stewards?
A. The men.
Trial Examiner Batten: I think that is all.
(Witness excused.)
Mr. Engelhard: Mr. Examiner, during the recess Mr. Rissman and I have agreed to stipulate that the books I hold in my hand is the official document which shows the—which is the final bulletin of proceedings of the Wisconsin Legislature, of the Senate and Assembly, and shows what happened in the session ending July 2nd, 1937, and from this we wish to introduce in evidence, we want to read into the record the important dates pertaining to the enactment of what is now known as Chapter 51 of Laws of the State of Wisconsin for the year 1937, and which created Chapter 111 in the Statutes.
Trial Examiner Batten: Mr. Clark, will it be agreeable to you to have counsel read the dates?
Mr. Clark: That is agreeable to me.
Trial Examiner Batten: Proceed then.
Mr. Engelhard: The bill was originally known as the 1863 No. 6-S, meaning that it was a Senate bill and was introduced in the Senate on January 19th, 1937 by Senator Severson.
Between the 19th day of January, 1937 and the 5th day of March, 1937, the usual committee proceedings took place.
Then on the 5th of March the bill was made a special order, and was read a second time on the 9th of March. On the 9th of March certain proceedings took place regarding amendments and substitute amendments, and then there were proceedings on the 11th of March, on the 12th of March, and the 17th of March, the 19th of March, the 22nd, and many proceedings on the 31st of March with reference to amendments, 24 amendments—no, pardon me, 18 amendments.
Then on the 1st of April actions were taken on 6 additional amendments, making a total of 24 amendments.
Then on the 1st of April there were actions taken on a large number of amendments and the actions taken on the amendments cover practically two and one-half pages in the proceedings. According to the record the amendments that were acted on, on the 1st of April, had grown to about 35 in number, and on the 1st of April the bill was ordered engrossed and read a third time. The rules were suspended and the bill was passed by the Senate by a vote of 30 to 3.

Then on the 2nd of April the bill was received from the Senate by the Assembly, and on the 2nd of April it was
1864 made a special order of business on the 8th of April, and on the 8th of April after certain amendments were either accepted or rejected by the Assembly, the bill was finally passed on the 8th of April by a vote of 77 to 19.

It was then immediately—

Trial Examiner Batten: Mr. Brever wasn't quite as much of a profit this morning as he thought.

Mr. Lamfrom: Not quite as much. I was more nearly accurate.

Mr. Engelhard: Then on the same day after the House had passed the bill it was sent back to the Senate and it was concurred in by the Senate.

Then on the 14th of April the report correctly enrolled at 4:25 p. m. on that day—I mean the report correctly enrolled at 4:25 on Tuesday, April 13th, 1937, and on April the 15th the Governor approved the bill and it was published as Chapter 51 on April 15th, 1937, and here it is.

I now ask that Chapter 51 of the laws of the 1937 be marked as respondent's exhibit, and I offer in evidence RESPONDENT'S EXHIBIT NO. 7.

Trial Examiner Batten: If there is no objection it may be received, and in connection therewith the dates and so forth which have just previously been read into the record.

Mr. Lamfrom: I think Exhibit No. 7 should be described.
in addition to being described as Chapter 51 of the laws
1865 of 1937 of the State of Wisconsin as "An Act to create Chapter 111 and section 20.58, and to amend sub-section (1) of Section 14.71 of the statutes, relating to the promotion of equality of bargaining power between employers and employees," and other things in the title.

Mr. Engelhard: I might state—

Trial Examiner Batten: The so-called Severson Act.

Mr. Engelhard: That is right, the act commonly known as the Severson Act.

Mr. Rissman: Or Wisconsin Labor Relations Act.

I have no objection, I don't know what the purpose of it is.

Trial Examiner Batten: It will be received.

(Whereupon, the document above referred to, marked RESPONDENT'S EXHIBIT NO. 7, was received in evidence.)

Mr. Engelhard: I will call Mr. Stichmann.

WILLIAM STICHMANN, a witness called by and on behalf of the respondent, being first duly sworn, was examined, and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) Mr. Stichmann, your name is William?

A. William Stichmann.

Q. You are an employee of the Falk Corporation?

A. I am.

1866 Q. How long have you been such employee?

A. Nine years the 1st of August this year.

Q. What is the nature of the work that you are now engaged in or do?

A. I am a welder.

Q. How long have you been a welder?

A. I think with the exception of about seven months I have been a welder all the time, with two years of apprenticeship.

Q. Were you ever a member of the Works Council?

A. I was.

Q. When were you such member?

A. I was a member of that Works Council from the beginning of it until the election in June of last year.

Q. That was June, 1937?

A. 1936.

Q. I mean 1936.

A. Yes.

Q. Were you present at the meeting of the Works Council in the month of April?

A. Of this year?

Q. Yes, in the month of April, 1937.

A. Yes.

Q. What was the date of that meeting?

A. There were three meetings, April 8th, the 12th and 13th.

Q. You say April 8th, the 12th and—

1867 A. The 13th.

Q. —13th?

A. Yes.

Q. You say that meeting of April the 12th was a Works Council meeting?

A. Well, really it wasn't a Works Council meeting, it was ex-Works Council and Council meeting together.
Q. What was the purpose of that meeting?
A. To get acquainted with the Wagner and Severson Acts.
Q. To get acquainted with the Wagner—
A. Yes.
Q. —and Severson Acts?
A. Yes, sir.
1868 Q. When were you asked to go to that meeting?
A. When was I asked?
Q. Yes.
A. I wouldn't remember just when it was.
Q. Was it on the 12th or was it prior to the 12th that you were notified that there was a meeting?
A. No, I am quite sure it was prior.
Q. Was there any discussion at the Works Council meeting on the 8th at which you were present regarding a meeting subsequently to be held between the then members and ex-members of the Works Council?
A. I think permission was asked of Mr. Harold Falk.
Q. For what?
A. If the meeting—if the Council men and ex-Council men could meet.
Q. Where?
A. Underneath the hospital.
Q. Was there any statement in connection with the request for permission as to the purpose of the meeting?
A. No, sir.
Q. What was that?
A. No, sir.
Q. Who asked that permission?
A. I don't remember.
Q. Was it one of the employee representatives or
1869 employer representatives?
A. Employee.
Q. That asked for permission?
A. Employee representative.
Q. Who was the chairman of the employee representatives at that time?
A. That I would not know, I was "ex" at that meeting.
Q. What is that?
A. I wasn't on the board—I wasn't a council man at that meeting.
Q. You were at the meeting of the 8th but you had not

ttended any other meeting so that you were not familiar
ith the organization.
A. No.
Q. You dropped out in June, 1936?
A. July 1st was the last meeting, or July—the meeting
ad in July was the last meeting I attended, but I lost out
n the election in June.
Q. So that between—the last meeting you attended while
ou were a member was in June, 1936?
A. July.
Q. July 1936?
A. Yes, sir.
Q. Then you had not attended any meeting until the 8th
of April, 1937?
870 A. That is right.
Q. Is that correct?
A. That is right.
Q. You did not know what the formation of the Council
as during that time as to who was Chairman of the em-
loyee representatives?
A. No.
Mr. Rissman: Will you answer for the record, you shake
our head.
The Witness: No.
Q. (By Mr. Engelhard.) Always answer so that the re-
orter can hear what you say, he hasn't time to watch your
ead.
Now, what discussion, if any, occurred at the meeting of
April 8th respecting the formation of any union, independent
r otherwise?
A. I don't remember of any.
Q. When you heard that Mr. Falk gave permission for a
meeting at the hospital, at that time did you know that you
were invited to attend that meeting?
A. No.
Q. When did—strike that, I asked that before.
How did you receive notice of the meeting of the 12th?
A. By one of the Council members named Stanley Adam
ski.
Q. Was that a notice by word of mouth?
A. Yes, sir.
1871 Q. Where were you at the time he gave you that
notice, if you recall?
A. I don't.

Q. When was the meeting of April 12th convened?
A. I don't remember.
Q. Well, when did it start? Maybe that is a simpler question?
A. Well, it was some time after dinner, just what time I would not know.
Q. Who was acting as chairman of that meeting?
A. John Brever.
Q. And do you recall what John Brever did at that meeting, if anything?
A. Yes, I recall him reading a letter; I didn't pay much attention to it.
Q. But did you pay sufficient attention so that you could give us the general subject that he discussed when he read the letter?
A. Yes.
Q. What was that?
A. In regard to the Severson law.
Q. After he had read that letter, what then took place?
A. Well, we discussed the law as far as we knew it and we decided to call in Mr. Harold Falk for any further information he could give us.
1872 Q. After that decision was made, how was Mr. Harold Falk called in, if you know?
A. He was sent for by one of us.
Q. Do you know the individual who actually went to Mr. Falk's office and called for Mr. Harold Falk?
A. If I remember, it was Mr. Kokalj.
Q. How do you spell his name?
A. K-o-k-a-l-j.
Q. K-o-k-a-l-j?
A. I think so, I don't know; he is sitting back there.
Q. Is that Frank?
A. Yes.
Q. Frank Kokalj?
A. Yes.
Q. And after Frank Kokalj had left the meeting, did he return with Mr. Falk, did he return with Mr. Falk, if you recall?
A. I don't know.
Q. Well, at any rate Mr. Falk came.
A. Yes, sir.
Q. Now, after Mr. Falk came to the meeting, what was the conversation that took place between Mr. Falk and any of the men that you heard?

A. Well, there was some discussion on the—I believe on the Wagner Law and the Severson bill.

1873 Q. What led up to the discussion, were there any questions asked?

A. Yes, sir, somebody asked questions.

Q. Will you state the nature of the questions that were asked if you can recall?

A. I can't.

Q. Can you state the nature of Mr. Falk's answers?

A. Yes, his answer was, so much that he wouldn't be sure himself, he could give us his opinion, but he would have to see a lawyer to get a correct interpretation of it himself.

Q. Well, with what respect did the boys ask Mr. Falk any questions pertaining to the Wagner Act?

A. Well, if it would be possible for us to form an independent union.

Q. They asked him that question?

A. I am quite sure.

Q. He stated he couldn't give a definite answer?

A. Yes.

Q. Now, what else did Mr. Falk say at that meeting that you heard?

A. Well, there was a general discussion there for a while, talking here and there and everybody was talking—

Q. Now, wait a minute, William.

Will you describe the physical surroundings of that room in which you were meeting?

1874 A. Well, we had a long table,—in fact I think it was two tables set together, and there were a number of us sitting around, and I don't know the exact number, but it was around 20, it might have been a few more or less, and little groups here and there talked among themselves, discussed this, that and the other thing, and some of us told stories and laughed while others were thinking more serious, but I do remember of me saying to Mr. Falk that if he could set that raise which he had promised us up a month, that the fellows out in the shop would feel a hell of a lot better about it.

Q. What did Mr. Falk say to that?

A. Mr. Falk said that if I thought the fellows would feel a lot better about it, that he couldn't say, he wasn't so straight that he couldn't bend, that if he thought the fellows would feel a lot better out in the shop, he didn't see no reason

he can't, and he went on to explain why he set it in the first place, at the first of June.

Q. What did he say?

A. He said that the work that was in the shop was all contracted for under the old wage scale and it would take nearly or around that time, up until the first of June to get most of that work out, and that new business coming in now, that he could allow for the present raise in wages.

Q. Was there anything said at that time in connection with that discussion that you had with Mr. Falk about 1875 an independent union?

A. That I had with Mr. Falk?

Q. When you and Mr. Falk had the discussion, was there anything said about an independent union?

A. No, sir.

Q. The statement was made here in court that one of the remarks that Mr. Falk made in connection with that raise of pay was in answer to a question put by someone, who said that it would help to organize the independent union if he granted this raise in pay, did you hear any such statement?

Mr. Rissman: I object to that as a misstatement of the record, if the Examiner please. There was no such testimony given.

Trial Examiner Batten: I have no recollection of anybody saying that; I have no recollection of any men saying that.

Mr. Clark: If the raise was moved forward, it would prevent a lot of men from joining—

Trial Examiner Batten: Yes, it would prevent a lot of men from joining the C. I. O.

I don't remember the question that way, that it would help the Independent Union. I think the question was that it would keep a good many fellows from joining the C. I. O. which of course I presume indirectly would help the Independent Union, although the Independent Union wasn't 1876 mentioned as I recall.

Mr. Engelhard: Maybe I misquoted the testimony, and I stand corrected.

Q. (By Mr. Englehard) Now, with the amendment that you heard from Mr. Batten, and from Mr. Clark, did you hear any reference made that it would prevent the men from joining the C. I. O. if this raise were granted?

A. I did not hear that.

Q. Were you in a position to have heard such a remark if it had been made by anybody to Mr. Falk?

A. I wouldn't say, something could have been said and I wouldn't have heard it, because I was talking and when I got through with my statement to Mr. Falk, we talked among ourselves there.

Q. This conversation you had with Mr. Falk, Mr. Stickman, was that open so that they could hear it, or was it private conversation you had with Mr. Falk?

A. No, I don't think it was private, it was right there at the meeting. Of course there were others talking down at the other end.

Q. Have you any idea how many men were within hearing of your question and Mr. Falk's answer? You said there were about 20 men there.

A. I think about that.

Q. Might there have been as many as 24?

1877 A. I think there could have been, as far as I know.

Q. While Mr. Falk was at that meeting, did he say anything at all about the C. I. O.?

A. Yes.

Q. What did he say?

A. He said that the men could join either the C. I. O., the A. F. of L. or the Independent Union, he wasn't allowed to say anything either way.

Q. Was there anything else said by Mr. Falk regarding unions, whether the C. I. O., the A. F. of L. or the Independent?

A. Not that I know of.

Q. Was there any decision arrived at by the men who were at this meeting of April 12th about forming an independent union, or joining the C. I. O., or joining the A. F. of L.?

A. No, we decided to adjourn and hold a meeting the next day, and Mr. Falk promised to get any further information that he could.

Q. Did you attend the meeting the next day?

A. I did.

Q. And when was that meeting called?

A. Well, it was after dinner too, just what time I don't know.

Q. What occurred at that meeting?

A. I don't know, there was a general discussion on
1878 the two bills pending at that time, or if the Wagner Act was passed, but anyway it was on the two laws.

Q. Well, what was the discussion about?
A. Well, the same as the day before, about forming an independent union.
Q. Who was chairman of that meeting, if you remember?
A. Why, it was John Wolf that day.
Q. How long was that meeting in session?
A. I would not know.
Q. Well, do you know when you left the meeting, about what time it was when you left the meeting, if you left it?
A. I left the meeting and I couldn't say what time it was, but I was supposed to go to work at 5:30 and it give me a little time to go home and come back to the shop by 5:30.
Q. While you were at that meeting, on the 13th, did Mr. Harold Falk come to that meeting?
A. No, sir.
Q. Did anyone else come to that meeting other than members of the Works Council and ex-members of the Works Council?
A. Yes, Mr. Richard Falk was there that day.
Q. How long after the meeting commenced did he appear?
A. I don't know.
Q. Do you know how he happened to come there?
A. Yes, we sent for Mr. Harold Falk and Mr. Harold Falk was not in the shop at that time.
1879 Q. Do you know who was sent to get Mr. Harold Falk?
A. Yes, I think Mr. Kokalj was sent.
Q. Mr. Frank Kokalj?
A. Yes.
Q. When he came back to the meeting was Mr. Richard Falk with him?
A. No, he come a few minutes later.
Q. Mr. Richard Falk came a few minutes later?
A. Yes, sir.
Q. Was there an explanation made to the meeting why Mr. Richard Falk came?
A. Yes, Frank said that Mr. Harold Falk was not available, so he asked Mr. Richard Falk to come.
Q. Now, then, when Richard Falk arrived there, what occurred?
A. Well, they asked him if he had any information for us on the Severson law, and what his answer was, I don't remember.

Q. Do you recall any of the remarks that Richard Falk ade at that meeting?
A. I don't know.
Q. Well, it was testified here that he made a remark to the fect that it cost $5 to incorporate.
Do you recall any such remark made by Richard Falk?
A. I don't know.
Q. It was also testified that he advised the men 880 there to incorporate the Independent Union.
Was there any such remark made by Richard Falk at you heard?
A. Not that I heard.
Mr. Rissman: Keep your voice up, Mr. Stickman, please.
Q. (By Mr. Engelhard) Did you leave before Richard alk had finished or had he finished before you left?
A. No, we postponed that meeting and we all left together.
Q. This was on the 13th?
A. The 13th.
Q. What was the plan with regard to meeting the next me, if at all?
A. I think the same, for the same reason,—for the same eason we left the day before, to get more information.
Q. About what?
A. The Severson and the Wagner laws.
Q. You wanted to know whether an independent union ould be established under either of the acts and be legal?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. Now, then, did you return to any further meeting on e 13th of April?
A. I did not.
Q. Do you know of your own knowledge that a sub- 881 sequent meeting did take place on that day?
A. I heard it did, yes, sir.
Q. But you did not attend that.
A. No, sir.
Q. Did you attend any meeting, any of these meetings— ou were at the meeting on the 12th and later on the 13th, id you attend any meeting on the 14th of April?
A. No, sir.
Q. The meeting, the first meeting of the 13th was the last eeting that you attended.
A. Yes, sir.

Q. When did you next attend any function at which an independent union was discussed?

A. On the 24th.

Q. Of April?

A. Yes, sir.

Q. Where was that meeting?

A. I think it was at the North Side Auditorium, on North avenue.

Q. What occurred at that meeting in substance, just so we know what the meeting was for?

A. Well, they took applications at the door and when the meeting was called, we elected our officers.

Q. That is, a board of directors was elected?

A. A board of directors, yes, sir.

1882 Q. And officers were elected?

A. Yes, sir.

Q. Prior to that time were there by-laws adopted?

A. Yes, sir.

Q. The by-laws were adopted first?

A. Yes.

Q. And then the board of directors were elected and then the officers were elected?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. You did not attend any meeting then on Sunday, the 18th?

A. No, sir.

Q. Were you out of the city that day?

A. I was not.

Q. How did it happen you were not at that meeting on the 18th?

A. Well, up until that time I was a pretty strong C. I. O. man, sir.

Q. Had you signed an application for the C. I. O.?

A. No, I had not.

Q. But you said you were strong for the C. I. O.?

A. I was.

Q. When did you change your mind?

A. I did.

1883 Q. —if you did.

A. I signed an application to the Independent Union on the 21st.

Q. Then some time on the 21st or prior thereto you decided which organization you wanted to belong to.

A. Yes, sir.

Q. Mr. Stickman, did any officer of the corporation in any manner influence you as to which organization you should join?

A. They did not.

Q. The joining of the Independent Union was your free choice?

A. It was.

Q. Did you prior to the time you made up your mind discuss the relative merits of the Independent Union and the C. I. O. with other workers?

A. Oh, yes.

Q. You discussed it with some members of the C. I. O.?

A. Yes, sir.

Q. And you discussed it with members of the Independent Union?

A. Yes, sir.

Q. And you came to your conclusion independently?

A. I did.

Q. At the meeting of the 12th was there anything said by Mr. Falk that indicated to you what his preference was 1884 as to which organization the men should belong to?

A. No, sir.

Q. Was there anything said on the 8th of April by Mr. Falk as to which union he would prefer the employees of the Falk plant to belong to?

A. I don't remember anything now.

Q. Of course you were not present at any other meeting at which Mr. Falk was present, if he was?

A. No, sir.

Q. Your statement is that the only time you heard him say anything to the boys at any meeting was on the 12th.

A. Yes, sir.

Q. Of April.

A. Yes, sir.

Q. Is that correct?

A. Will you repeat that question?

Mr. Engelhard: Repeat the question, Mr. Reporter.

(The record was read.)

The Witness: You say an Independent Union?

Q. (By Mr. Engelhard.) Yes.

A. Yes.

Q. Was there any discussion at the April 8th meeting about an independent union—that was the regular meeting

of the Works Council—at which you were an invited guest.
A. I don't remember of anything.
1885 Mr. Engelhard: I think that is all.

Cross-Examination.

Q. (By Mr. Rissman.) Mr. Stickman, are you a member of the Independent Union now?
A. Yes, sir.
Q. Are you an officer?
A. I am.
Q. What office do you hold?
A. I am just on the board of directors.
Q. How did you happen to be at the meeting of the Works Council of April 8th?
A. I was asked to come in.
Q. By whom?
A. Stanley Adamski.
Q. For what purpose?
A. He didn't state.
Q. What did you do there?
A. What did I do there?
Q. That is right.
A. I just sit and listened in.
Q. Did you take any part in the discussion?
A. No, sir.
Q. All right, at the meeting of April 8th or the meeting of April 12th you were at both of those meetings, you heard Mr. Falk speak.
1886 A. Yes, sir.
Q. You have related to us everything you heard him say.
A. I would not say I have.
Q. Well, do you recall anything now that you did not give us when Mr. Engelhard was questioning you?
A. I think he—on the meeting of April 8th?
Q. Yes.
A. He discussed a statement that he had in writing in regard to the raise that the Works Council had asked for.
Q. Do you recall anything else that Mr. Falk discussed at either one of those meetings, that you haven't already related to us?
A. I don't offhand now.
Q. But there may have been discussions or statements

made by him that you did not hear or you do not recall at the present time?

A. I suppose there may have.

Q. Do you know now which union Mr. Harold Falk preferred, the Independent Union or the C. I. O.?

A. Well, I read his testimony in the paper.

Q. Did you know it before you read his testimony in the paper?

A. I did not know it, no.

Q. Did you have any opinion as to which union he preferred before you read his testimony in the newspaper?

1887 Mr. Engelhard: Are you implying that he indicated in this courtroom which union he prefers?

Mr. Rissman: The witness implied that.

Trial Examiner Batten: What was the last question?

(The question was read.)

Trial Examiner Batten: You may answer that, yes or no.

The Witness: Well, I think I formed my own opinion, yes, sir.

Q. (By Mr. Rissman.) What is that opinion?

A. I imagine he would prefer the Independent.

Mr. Rissman: That is all.

Redirect Examination.

Q. (By Mr. Engelhard.) What would be the basis for your imagination, Mr. Stickman?

A. Naturally if I put myself in his place I would like to deal with my employees rather than have an outsider deal with them for me.

Q. With reference to this meeting of April 8th, Mr. Stickman, there was a discussion about a bonus, wasn't there, do you recall that?

A. I don't think I do.

Q. You don't recall that?

A. No.

Q. Do you remember whether Mr. Falk discussed whether there would be a bonus for the year 1937?

1888 A. Yes, I remember hearing it some place, but I wouldn't say it was at the meeting or not.

Mr. Engelhard: That is all.

Mr. Rissman: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I don't think I have any questions.

Q. (By Trial Examiner Batten.) Mr. Stickman, you said you are a director of the Independent Union?

A. Yes, sir.

Q. How are the directors elected in that organization?

A. They are elected by vote.

Q. Who elects the officers?

A. The officers are elected by the board of directors.

Trial Examiner Batten: That is all.

(Witness excused.)

Trial Examiner Batten: Don't put this in the record.

(Discussion outside the record.)

Mr. Engelhard: Mr. Examiner, shall we continue to five thirty or five?

Trial Examiner Batten: Just continue to five.

Mr. Rissman: Off the record please.

(Discussion outside the record.)

Trial Examiner Batten: All right, you may proceed, Mr. Engelhard.

Mr. Engelhard: I will call Mr. Kokalj.

1889 FRANK KOKALJ, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) Your first name is Frank, Mr. Kokalj?

A. Yes, sir.

Q. How do you spell your last name?

A. K-o-k-a-l-j.

Q. Will you pronounce it?

A. Kokal,—the "j" is silent.

Q. Mr. Kokalj, are you employed by the Falk Corporation?

A. Yes, sir.

Q. How long have you been employed by it?

A. Six and one half years.

Q. What is your work with the firm?

A. Crane maintenance or maintenance department.

Q. Crane maintenance?

A. Yes, sir.

Q. Were you present at the meeting of the Works Coun-
l on the 8th of April?
A. Yes, sir.
Q. How did you happen to be at the meeting of the 8th
f April?
A. I was a representative of the Works Council, I was a
member of the Works Council.
890 Q. You were a member of the—
A. Of the Works Council, yes, sir.
Q. Of the Works Council.
A. Yes, sir.
Trial Examiner Batten: Mr. Engelhard, pardon me for
nterrupting.
Mr. Engelhard: Yes, sir.
Trial Examiner Batten: Did Mr. Stickman leave?
Mr. Engelhard: No.
Trial Examiner Batten: I wonder if you would mind ask-
ng him, Mr. Englehard, if he was paid for the time he at-
ended those meetings?
Mr. Engelhard: Yes, I will ask him that.
Please state, Mr. Stickman, whether you received payment
or the time you attended meetings on the 8th, on the 12th and
n the 13th?
Mr. Stickman: I don't remember if I did or not; I was
vorking nights at the time.
Mr. Engelhard: Do you remember whether or not after
ou received your check for that week, you received any de-
uctions?
Mr. Rissman: He did not say he did.
Mr. Stickman: Yes, I was deducted some there at one time,
ut honestly I wouldn't be able to say what it was for
though.
891 Mr. Engelhard: Well, did you—do you know just
what you did when you went to the meeting? Did you
unch any cards before you went to the meeting of the 8th,
mean on the 12th?
Trial Examiner Batten: Mr. Engelhard, I wonder if you
vould mind, will there be someone here tomorrow who might
estify as to whether Mr. Stickman was paid for those meet-
ngs?
Mr. Engelhard: I think the record would show that. We
vill have testimony introduced, Mr. Examiner, showing how
nuch each man was paid and how much each man was subse-
uently deducted.

Trial Examiner Batten: Then we don't have to bother—

Mr. Rissman: Is that the whole series of meetings, the 12th, the 13th, 14th,—whatever it was?

Mr. Engelhard: Well, of course, a man was not paid if he did not attend a particular meeting, he could only be paid for the time he spent.

Trial Examiner Batten: Well, of course one thing I was particularly interested in was Mr. Stickman, was whether or not he was paid for the meeting of the 8th.

Mr. Engelhard: Were you paid for the meeting of the 8th?

Mr. Stickman: I don't know.

Mr. Engelhard: Well, do you know whether you were paid for the meeting of the 12th?

1892 Mr. Stickman: I don't remember, I was just trying to get it straight in my own mind, I can't place it now. You see, I was working at night at the time, and I went home in time for work that night.

Trial Examiner Batten: Well, the records will probably show, Mr. Engelhard.

Mr. Engelhard: Yes, I think they will show what the situation was.

Now, what question have I asked Mr. Kokalj?

(The question was read.)

Q. (By Mr. Engelhard.) You were at the meeting of the 8th because you were a regular member of the Works Council?

A. Yes, sir.

Q. That is, you were an employee representative?

A. Yes, sir.

Q. What department did you represent on the Works Council?

A. The maintenance department, the electricians, stock room, power house, yard gang and watchmen.

Q. I assume that all of those—

A. Pardon me.

Q. (Continuing.) —departments nominated you and some others in the primary?

A. Yes, sir.

Q. And then you and one other ran off the election, is that right?

1893 A. Yes, sir.

Q. Then you were elected?

A. Yes, sir.

Q. How long were you on the Works Council?

A. From the first of January until the last meeting I attended, was April 8th.

Q. That is, you were on the Works Council during the year 1937?

A. Yes, sir.

Q. Now, Mr. Kokalj, when you were at the meeting on the 8th of April, was Mr. Falk there at any time?

A. Yes, he was there.

Q. Do you recall any discussion that took place between the Council and Mr. Falk?

A. Yes, sir.

Q. What was that discussion?

A. A month previous to April 8th we brought before management to have a vacation with pay and a bonus, and during that meeting he gives us a reply on that.

Q. What did he say in substance about a raise in pay and bonus and vacation?

A. There was no raise in pay.

Q. I said, what did he say about a raise in pay? And, about a vacation and a bonus?

A. Well, first of all, the vacation was out I think and instead of that he gives us a raise that date, starting June 1st, and the bonus matter, that would be taken up later. 1894

Q. Now, was there any discussion had at that meeting of April 8th regarding the Severson Act?

A. No, sir.

Q. Or the Wagner Relations Act?

A. No, sir.

Q. Was there any discussion had there regarding labor acts of any kind?

A. No, sir.

Q. Did you—were you in a position at that meeting—I mean were you so located at that meeting to have overheard whatever was said that meeting?

A. I don't understand the question.

Mr. Engelhard: Read the question please.

(The question was read.)

The Witness: Yes, sir.

Q. (By Trial Examiner Batten.) You mean by everybody present?

A. Yes, sir.

Q. (By Mr. Engelhard.) By everybody present?

A. Yes, sir.

Q. Was there any discussion at that meeting with regard to an independent union?

A. No, sir.

Q. Was there any discussion at that meeting about 1895 further meetings of the Works Council?

A. There was one about, somebody asked—I don't know exactly who did, but asked Mr. Falk if we could get the ex-representatives together and the present representatives, to hold a meeting.

Q. Was there any mention made as to the purpose of that meeting?

A. No, sir.

Q. Did you know at that time what the purpose of the meeting would be if held?

A. I think I had a pretty good idea, yes.

Q. All right, from whom did you get that idea?

A. I think Mr. Richard Falk explained the small Wagner bill for us, that it would eliminate the company unions.

Q. When did he explain that to you?

A. That was previous to the April 8th meeting.

Q. Where was that meeting had at which Mr. Richard Falk explained to you what you call the small Wagner Act,—you mean the Severson Act?

A. Yes, sir.

Q. Where was that discussion had?

A. In the cafeteria off the main office.

Q. Who were the people present at that time?

A. The present Works Council, Mr. Dick Falk, I think Mr. Green if I am not mistaken.

1896 Q. What was the occasion of that meeting?

A. To thrash out some of the ideas of the Severson bill or small Wagner bill.

Q. You mean determine what the effect of that bill would be if it were enacted in law?

A. Yes, sir.

Q. Was there any decision made at that particular meeting as to whether or not there would be further meetings to determine the effect of that law?

A. No, sir.

Q. Now, when you say that you had an idea as to what the meeting would be for, if permitted to be held, did you get any idea from the discussions with other members of the Works Council as to what it would be for?

A. Naturally when you come back to the shop from a meeting they want to know what you were there for.

Q. Yes. Go ahead.

A. And we all knew about this act being up in Madison, so

you could only tell them what you heard, that we tried to find out this act that was up there, that was all.

Q. Now, how did you happen to go to this meeting on the 12th?

A. Well, I was notified there was going to be a meeting.

Q. Who notified you?

A. I don't know the exact person, but I was notified, and then I told two or three fellows to come down.

1897 Q. Were you notified by written notice or by telephone? Or, by a person speaking to you?

A. I think I got a note from someone, I am not sure who it was; then I passed that note on to two other fellows.

Q. So in due course you arrived at the meeting on the 12th?

A. Yes, sir.

Q. Do you know when that meeting started?

A. Well, it was some time after dinner, I don't know the exact hour.

Q. Who was chairman of that meeting?

A. April 12th?

Q. On April 12th.

A. The chairman of the Works Council at that time was Mr. Brever.

Q. You mean he was chairman of the entire Works Council?

A. Well, the present Works Council, yes.

Q. Was he chairman of the whole Works Council or chairman of the employee representatives?

Q. Chairman of the employee representatives.

Q. What happened after the meeting was called to order?

A. Well, I think he read a letter, or I know he did.

Q. What was the substance of that letter that he read?

A. From something that we were facing, some act that was up at Madison at the present time.

Q. Do you recall anything else there was in that let-

1898 ter that he read?

A. No, I don't.

Q. What discussion followed the reading of that letter?

A. Well, there was quite a bit of discussion.

Q. About what?

A. About this act, or what they would have to do; so I was asked to go out and call up Mr. Falk.

Q. How far was this meeting place where the boys met from Mr. Falk's office?

A. You mean in the matter of feet?
Q. Yes.
A. About 200 feet.
Q. Or blocks,—I don't know how far it is. Can you give us an idea of how far it is?
A. About 150 to 200 feet.
Q. Did you go over to the office?
A. No, I called over the phone.
Q. Were you able to get in touch with Mr. Falk?
A. Yes, sir.
Q. Did he come over?
A. He come over, yes.
Q. Now, will you tell us what occurred when you got there?
A. Well, they wanted to know about this Severson Act, or small Wagner Act, wanted him to give some details on it.
Q. What did they want to know about that Act?
1899 A. Well, I don't know what the real discussion was, I suppose it was something pertaining—
Mr. Rissman: I object to what he supposes.
Q. (By Mr. Engelhard.) Just a minute, if you don't know, Mr. Kokalj, don't testify to something you don't know.
A. I don't know.
Q. We don't want suppositions or mere imaginations.
A. All right.
Q. Give us the facts just as you know them.
Mr. Engelhard: Give him a little chance, Mr. Rissman. These fellows here haven't got the memories that we have. By engaging in intellectual debate and all of that, we sharpen our wits, but these gentlemen don't.
Now, Mr. Kokalj, do you remember anything Mr. Falk said at that meeting of the 12th?
A. Well, there was a remark made by him he hadn't got it down pat or something like that, that he would find out for us.
Q. (By Mr. Engelhard.) About what would he find out for you?
A. That I don't know.
Q. Were you at this meeting—strike that.
When you were at this meeting of the 12th was this a regular formal meeting at which everybody kept quiet while somebody else talked?
1900 A. No, it wasn't, at one end of the table they were telling jokes, and this end something else.
Q. In other words, it was a sort of general discussion?

A. Yes, sir.
Q. Did I ask you before who was chairman of that meeting?
A. Yes, you did.
Q. Now, was there anything said about any union at that meeting by Mr. Falk that you heard?
A. No, sir.
Q. Was there anything said about an independent—forming an independent union by Mr. Falk?
A. No, sir.
Q. Were there any questions put to Mr. Falk regarding an independent union by any men that you recall?
A. No, sir.
Q. How long did that meeting last?
A. About an hour or an hour and a half.
Q. Were you there when the meeting adjourned?
A. Yes, sir.
Q. What action was taken by the meeting—what action was taken by the men at that meeting on any subject, if they did take any action?
A. Well, they all—the meeting adjourned and we were supposed to come back the next day and Mr. Harold Falk would have some more information for us.
1901 Q. Was that action taken at Mr. Harold Falk's request, or was that action taken after he had left?
A. That was after he had left.
Q. The boys decided to have a meeting the following day.
A. Yes, sir.
Q. Is that correct?
A. Yes, sir?
Q. Now, do you recall any conversation had between Mr. Falk and Mr. Stickman at that meeting?
A. Well, there was some conversation with Mr. Falk but I don't know who he was conversing with.
Q. Well, did you hear the remark that Mr. Falk made when he had this conversation with some other person whom you do not know?
A. Yes, something about a raise, so that we would get it one month in advance.
Q. Was that the remark that Mr. Falk made that you heard?
A. Well, that he would grant the raise one month sooner.
Q. Did he give any reason for granting it one month sooner, that you heard?
A. There would be less trouble in the shop, if that was

what these fellows wanted, that was what he would grant them.

Q. Well, do you recall what the nature of the question was that was put to Mr. Falk which caused him to give the answer that you say he gave?

1902 A. No, I don't.

Q. You don't know who put the question to him?

A. No, sir.

Q. What end of the room were you in?

A. I was sitting back of the post.

Q. Were you joking with somebody while the meeting was going on?

A. Well, I suppose I was not attending to business.

Q. Do you know how you happened to be selected to go out and ask Mr. Falk to come?

A. Yes, at that time I was sitting at the foot of the table.

Q. (By Trial Examiner Batten.) You were close to the door.

A. Yes, I was.

Q. (By Mr. Engelhard.) And the chairman asked you to go.

A. Yes, sir.

Q. Now you said on the 12th the meeting adjourned without any action taken except you were to meet the next day, the 13th?

A. Yes, sir.

Q. Did you attend the meeting on the 13th?

A. Yes, sir.

Q. By the way, you attended—did you attend two meetings on the 13th or just one?

A. Yes, I attended two, but I come in late on the second one.

1903 Q. That was the second one that same day?

A. Yes, sir.

Trial Examiner Batten: Mr. Engelhard, I believe this would be a pretty good place to stop, before you get into this second meeting.

Mr. Engelhard: All right. You come back tomorrow.

Trial Examiner Batten: We would not be able to complete this witness anyway.

Mr. Engelhard: No.

Trial Examiner Batten: So we will adjourn until 9:00 o'clock tomorrow morning.

Mr. Engelhard: Very well.

(Whereupon at 5 o'clock P. M. August 23rd, 1937, the hearing was adjourned to 9:00 o'clock A. M. August 24th, 1937.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

(Caption—XII-R-85 and XII-C-57)

Room 409, Milwaukee County Courthouse,
Milwaukee, Wisconsin,
Tuesday, August 24th, 1937.

he hearing was resumed, pursuant to adjournment, at
0 o'clock a. m.

ore:

James C. Batten, Trial Examiner.

pearances:

Robert R. Rissman, and
S. G. Lippman, Attorneys on behalf of the National Labor Relations Board.
A. G. Goldberg, 511 Warner Building, Milwaukee, Wisconsin, appearing for International Union of Operating Engineers, Local No. 311.
Giles F. Clark, of Alexander, Burke & Clark, 110 East Wisconsin Street, Milwaukee, Wisconsin, appearing for Independent Union of Falk Employees.
Lamfrom, Tighe, Engelhard & Peck, by Leon B. Lamfrom, and A. J. Engelhard, appearing for The Falk Corporation.

PROCEEDINGS.

Trial Examiner Batten: Will the reporter please show in record that there is no attorney present except the attorys for the respondent, at nine o'clock.

(A short recess was taken.)

Mr. Rissman: Is Mr. Clark here this morning?

Trial Examiner Batten: Well, he advised us that we could proceed without him. Do you think we had better proceed this stage of the proceedings without Mr. Clark, Mr. Ilson?

Mr. Wilson: Well, I called the office at the start of the aring, and he said it would be all right.

At this stage of the game should I call him again?

Trial Examiner Batten: What is your opinion, do you nk we had better wait?

Mr. Wilson: I think we should wait.

Trial Examiner Batten: Will you please go and call him and see, please.

Mr. Lamfrom: May we have a five minute recess while we are waiting?

Trial Examiner Batten: Whatever is necessary.

Mr. Engelhard: He may probably be—

Trial Examiner Batten: This is not in the record.

(Discussion off the record.)

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to
1909 proceed, gentlemen.

Mr. Clark, I guess at this stage of the proceedings, you don't want us to proceed without you?

Mr. Clark: No, I would rather be here; I will be here.

Mr. Engelhard: Mr. Kokalj, will you take the stand, please.

FRANK KOKALJ, resumed the stand as a witness by and on behalf of the respondent, being previously duly sworn, testified further as follows:

Direct Examination (Continued.)

Mr. Engelhard: Will the reporter read the last question and answer.

(The record was read.)

Q. (By Mr. Engelhard.) When you say he came in late to the second one, you mean the second meeting of the 13th?

A. Yes, sir.

Q. What was the reason?

A. Well, I had a break-down job on a crane and I wanted to get that going before coming, get it through, it was pretty serious.

Q. During the intermission between the first meeting and part of the second meeting you were working at your job, were you?

A. Yes, sir.

1910 Q. Now, Mr. Kokalj, what occurred in the first meeting that you remember, of the 13th?

A. Well, we all had an understanding that Mr. Falk would come back with more information for us, and I was sent out to get Mr. Falk, but he wasn't in at the time, he was downtown or some place, and I come back and told them, they said

—I told them that Dick Falk had just come into the garage, and I asked if it was all right for Dick to come down and they said, "Yes", so I went and got Dick.

Q. By "Dick" do you mean Richard Falk?

A. Yes, sir.

Q. That is a son of Mr. Harold Falk?

A. Yes, sir.

Q. After Mr. Richard Falk arrived at the meeting, what occurred?

A. Well, he couldn't explain much, so he was there a short time and then Mr. Connell come in.

Q. Well, suppose you tell us if you can what conversation took place between Richard Falk and the men at the meeting?

A. No, I couldn't repeat that, I don't know what it was.

Q. Do you know whether any of the men asked Mr. Falk any questions?

A. There were questions asked, but I don't remember what they were.

1911 Q. It was testified here by one witness that Richard Falk mentioned about the cost of incorporating. Do you recall him making any such statement that it would cost five dollars to incorporate?

A. No, sir.

Q. Pardon?

A. No, sir.

Q. If he had made such a statement would you have heard it?

A. Yes, sir.

Q. Were you in a position to hear it?

A. Yes, sir.

Q. And you heard no such statement?

A. No, sir.

Q. I believe it was also testified that Richard Falk advised that an independent union be incorporated.

Do you recall any such statement by Richard Falk?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Were you in a position to have heard such a statement, if it had been made?

A. Yes, sir.

Q. Do you know whether or not there was any discussion at that meeting as to what the rights of employees were under the Severson Act?

A. I don't remember.
1912 Q. Or under the Wagner Act?
A. No, sir.
Q. Now, you stated that Mr. Connell came in.
A. Yes, sir.
Q. Do you know how he happened to get there?
A. Well, I guess he come down of his own accord.
Mr. Rissman: I move that be stricken.
Trial Examiner Batten: I believe—
Q. (By Mr. Engelhard.) I am just asking you whether you know how he came.
A. No, I don't.
Trial Examiner Batten: Well, I think he wanted to know if he knew how he came.
Mr. Engelhard: He said he came down of his own accord.
Mr. Lamfrom: He said he guessed he came down of his own accord.
Mr. Engelhard: We don't want to put in any guess, your Honor, whether this witness or some other witness.
Trial Examiner Batten: Well, it may stand for whatever it is worth.
Q. (By Mr. Engelhard.) What did Mr. Connell say while he was at the meeting, if you recall?
A. I don't recall what he said.
Q. Was he there for any length of time?
A. He was there only a short time.
1913 Q. What do you mean by that, a few minutes, half an hour, or a quarter of an hour, fifteen minutes?
A. Well, ten minutes at the most.
Q. Now, what was done at that meeting, that first meeting of the 13th?
A. Well, we all come down there with the understanding that Mr. Falk would come back with some more information.
Q. Information about what?
A. About the Severson Act or small Wagner bill.
Q. And what was done at the meeting, at that first meeting by the men? Did they arrive at any decision about anything?
A. No, they didn't.
Q. Then what was done?
A. Well, after Mr. Connell give answer for a few questions on whatever they did ask him, we adjourned.
Q. With any understanding?
A. No, sir.

Q. Then you said you went back to your job?
A. Yes, I went to the department I worked in there, there
as a break-down job that I had to go on right away.
Q. Now, during the time you were engaged at your work
id you have any opportunity to talk to any person about
his matter that the meetings were about?
A. Not particularly on April 13th.
Q. Did you—how did you happen to go back to the
914 second meeting?
A. Well, I was coming back for some tools when I
net Mr. Falk right at the electrical department.
Q. Did you meet him alone?
A. No, there was—
Q. Were there others there?
A. There were three or four of us there.
Q. Which Mr. Falk was that?
A. Mr. Harold Falk.
Q. Did you have a conversation with Mr. Falk at that time?
A. There was a short conversation, yes.
Q. What was that conversation?
A. I think it was something about—it was all right to go
head with the independent union under the particular acts
p in Madison.
Q. Did Mr. Falk say anything else?
A. No, sir, not that I remember.
Q. Did he say anything about that you boys—you should
o back to a meeting?
A. No, sir.
Q. Now then, did you go to the meeting after that?
A. Yes, I come in after that.
Q. Well, how did you happen to go over to the second
neeting?
A. Well, I think it was Mr. Greget that said we should
915 all get together and go back to the meeting.
Q. Then you went back there?
A. Yes, but first I had to finish this job.
Q. Now then, when you arrived at the second meeting of
he 13th, what occurred after you arrived?
A. Well, I think there was some discussion about a lawyer,
nd after some discussion I think a committee was appointed
o go see Mr. Falk.
Q. Was this committee appointed before or after the dis-
ussion about a lawyer arose?
A. I think it was after.

Q. Were any names of lawyers mentioned?
A. Yes.
Q. At that meeting?
A. There were two or three names but I don't recall the names.
Q. After the committee was appointed did the men remain in session, did they remain at the meeting?
A. Yes.
Q. You remained there, too?
A. Yes, I remained.
Q. And how long was the committee gone before it returned?
A. About half an hour.
Q. What was the report of the committee when it returned?
A. Well, that they—I don't know if I could repeat
1916 that, I am not sure.
Q. Well, give us the substance of it, what did the committee report?
A. Well, Mr. Falk made,—or the committee asked Mr. Falk to make a date with Mr. Clark for the next morning.
Q. Mr. Clark?
A. Or Mr. Burke, I think it was.
Q. Now, do you know which?
A. No, I don't exactly.
Q. For what time the next morning?
A. I think ten o'clock.
Q. After that report was made what occurred?
A. Well, we made up a collection of one dollar a member.
Q. Do you know how many men contributed?
A. What?
Q. Do you know how many men contributed to that collection?
A. About 17 or 18, 17, I think it was.
Q. All those men who were at that meeting at that time?
A. Yes, sir.
Q. The men that were at that second meeting, you say each gave a dollar?
A. Yes, sir.
Q. What was the purpose of that collection?
A. Well, so when they did go to the attorney's office the next day they would not go there without any money,
1917 in case he wanted some money to incorporate, or something like that.
Q. Had there been any decision made at the meeting as

o what type of organization would be organized, whether an ssociation or a corporation?

A. That I don't remember.

Q. Now, did you attend any other meeting at the hospital, nderneath the hospital?

Well, I will ask you this: Did you attend a meeting the ext day, on the 14th, at which a report was made—this is all n evidence—about what occurred at Mr. Burke's office?

A. Yes, I think there was a meeting the next day.

Q. (By Trial Examiner Batten.) Did you attend a meeting, that is the question?

A. Yes, sir, I was there.

Q. (By Mr. Engelhard.) And what was the conversation t that meeting, if you recall?

A. Well, as far as I can remember it was something about he attorney's fees, that if this independent union would go hrough, that he would send them a bill, and if it would drop e wouldn't accept anything then.

Q. That was the report of that committee?

A. Yes, sir.

Q. At that meeting?

A. Yes, sir.

Q. You have testified before, or I believe it was 918 yesterday, that you attended a meeting of April 8th?

A. Yes, sir.

Q. Mr. Neal, when he testified here, said that Mr. Falk in onnection with the discussion about a raise and bonus and acation, when he stated that he would give the matter conideration, that a raise would go through as of June 1st, Mr. Neal stated he would give the raise and vacation with pay, rovided there was no third party intervening.

Did you hear any conversation or any statement made by Ir. Falk along that line?

A. Yes, sir.

Q. Will you give us the statement that Mr. Falk made?

A. Well, he granted us the raise instead of a vacation with ay, starting June 1st, provided no third party intervened, nd he said if a third party intervened he would start out resh.

Q. With whom?

A. With the third party.

Q. Did he make mention of any particular third party?

A. No, sir.

Q. At that time?

A. No, sir.

Q. Do you recall any conversation had between the men in this meeting of the 8th and Mr. Falk regarding the Cutler Hammond Manufacturing Company and described—this 1919 is what he said:

"And he talked to the officials down there, and they had the C. I. O. and the American Federation of Labor both in there, and it seems as though they were having trouble with it; he named a certain amount, * * * he said they were having trouble, and the Cutler-Hammer were going to let it run along the way it was as long as they could.

"He said if they couldn't do anything about it, they were going to dump it over in the government's lap."

Did you hear Mr. Falk make any such statement at the meeting of the 8th?

A. No, sir.

Q. Were you in a position to have heard such a statement if it had been made?

A. Yes, sir.

Q. During the time Mr. Falk spoke at the meeting of the 8th was there any commotion?

A. No, sir.

Q. At the meeting of the 8th did you hear Mr. Adamsky ask Mr. Falk what he aimed to do?

A. No, sir.

Q. Did this occur at the meeting:

"Mr. Adamsky—"

This is Mr. Neal testifying.

"Mr. Adamsky asked him what he aimed for us to do?"

1920 Mr. Falk said:

"He aimed for us to start the independent union, something to take the place of the Works Council."

Mr. Falk said, "He didn't believe he had anything to say about it, but he would answer the question, if that was when he figured—what he figured on doing."

Did Mr. Falk make any such statement at the meeting of the 8th?

A. No, sir.

Q. About any independent union?

A. No, sir.

Q. And further Mr. Neal testified:

"Mr. Falk said he would get the information for us, how to start this independent union, and would let us know later about it."

id he make any such statement at that meeting?
. On April 8th?
. On April 8th.
. No, sir.
. Do you recall anyone asking Mr. Falk at that meeting ther or not the members of the Council and ex-members he Council could meet in the hospital?
. Yes.
. Was there anything said at that meeting as to why they wanted—why the men wanted that permission?
1 A. No, sir.
Q. Did you hear Mr. Harold Falk say anything along line, Mr. Neal testifying:
'Mr. Harold Falk said that we should meet, that is, the rks Council and former Works Council men could meet nake arrangements for organizing this independent union company property, but after it was organized we would e to keep off the property."
. No, sir.
. Did Mr. Falk make any statement about meeting on pany property or off the property?
. No, sir.
. At any time, at any of these meetings?
. No, sir.
. Either on the 8th or at any other meeting he attended?
. No, sir.
. Now, at the meeting of the 12th did you hear Mr. John fer ask any question of Mr. Falk?
. No, sir.
. Did you hear Mr. William Stichmann ask Mr. Falk any stions?
. No, sir.
. Did you hear anyone ask Mr. Falk a question about ancing the raise from June 1st to May 1st?
A. Yes, but I don't know who made—or who asked
2 the question.
Q. Well, did the person who asked that question

rial Examiner Batten: Well now, Mr. Engelhard, why 't you ask him—he says he remembers—why don't you him what was said?
Ir. Engelhard: What was said?
rial Examiner Batten: And give the witness an oppor- ity to testify.

Q. (By Mr. Engelhard.) What was said?

A. Something about bringing that raise from June 1st to May 1st.

Q. Yes.

A. And Mr. Falk said that if it would lessen the trouble in the shop he would grant that.

Q. Was there anything said by the person who talked about advancing the raise and Mr. Falk about any union?

A. No, sir.

Q. Did you hear this statement made: "That if you would put the raise—put the raise that he had promised for June 1st ahead a month, that it would keep a lot of men from joining the C. I. O. or an outside organization"?

A. No, sir.

Q. You heard no such conversation?

A. No, sir.

Q. Now, at the meeting on the 12th you said that Mr. 1923 Falk was present, did you hear him say that he would bring you information as to how to start this independent union?

A. No, sir.

Mr. Engelhard: I might state that I asked this question in connection with Mr. Neal's testimony, all of these questions are being asked with respect to Mr. Neal's testimony.

Trial Examiner Batten: Well, my only interest, Mr. Engelhard, for interrupting a moment ago was that on direct examination the witness couldn't recollect anything that happened at these meetings to speak of, and he apparently now recalls quite definitely about a number of these things. That is the only reason.

Q. (By Mr. Engelhard.) Well, yesterday the testimony covered the 12th; we didn't go into the 12th, we didn't go into the 12th today.

Trial Examiner Batten: I mean my only reason for interrupting, as long as the witness indicated he didn't hear this conversation, he should be permitted to indicate what he heard.

Mr. Engelhard: He so testified yesterday when I examined him about the 12th, he did say he heard the conversation but he couldn't identify the man who entered into the conversation with Mr. Falk.

Q. (By Mr. Engelhard.) Mr. Kokalj, Mr. Neal testified:

"Richard Falk stated that he would have to incor-
924 porate, that it would cost $5.00 to incorporate, and it would take three men to sign the papers."

Now, at the meeting on the 13th did you hear Richard Falk make any such statement as that?

A. No, sir.

Q. Mr. Neal testified that Mr. Falk, Mr. Harold Falk, attended a meeting on the 13th.

What have you to say as to that?

A. The second meeting?

Q. Either the first or second meeting.

A. Well, the second meeting I come in late, and when I come in Mr. Falk was not at the meeting.

Q. Was he at the first meeting that day?

A. No, sir.

Trial Examiner Batten: Who was that Mr. Engelhard, testifying?

Mr. Engelhard: Mr. Neal.

Trial Examiner Batten: Do you have his question and answer there

Mr. Engelhard: Yes, I have the question and answer.

Trial Examiner Batten: What was his answer? Will you read it to me, please? I recall it a little differently.

Mr. Engelhard: (Reading):

"Q. Were there any other meetings held by this same group who met on April 12th, after April 12th?

925 "A. Yes.

"Q. Were you present?

"A. Yes.

"Q. When was the next meeting?

"A. April 13th.

"Q. Where was that held?

"A. Underneath the hospital.

"Q. During working hours?

"A. Yes.

"Q. What discussion took place there?

"A. Well, we went down underneath the hospital and we waited for Mr. Falk. He had promised to bring us information as to how to start this independent union.

"Q. Mr. Harold Falk?

"A. Mr. Harold Falk.

"And someone called for him at the office, and he wasn't here, and Mr. Richard Falk came down in his place.

"Q. Did he say anything? * * * What occurred at that meeting of April 13th?

"A. Well, the meeting was adjourned, and some of the night men went home. I went out in the foundry and talked to Stanley Adamsky."

Then he talked about a conversation he had with Stanley Adamsky and he goes on and says:

"Practically all the fellows that had been present at
1926 the first meeting; one or two of the night men had went on home.

"Q. What took place at that meeting?

"A. Well, Mr. Falk explained what he had found out.

"Q. Mr. Harold Falk?

"A. Mr. Harold Falk.

"Q. Just tell us what he said if you can?

"A. Well, he said we would have to incorporate, and that we would have to do it as quickly as possible, because the C. I. O. were working in the plant."

Trial Examiner Batten: Yes, that is as I recall it. I just wanted to be sure.

Q. (By Mr. Engelhard). Now, Mr. Kokalj, on the 13th at any meetings you attended Mr. Harold Falk was not present?

A. No, sir.

Q. As far as you know the only meeting he attended while the men were meeting in the basement of the hospital was on the 12th?

A. Yes.

Q. While you were at the meeting at which Mr. Harold Falk was present, did you ever hear him say:

"Well, we would have to incorporate, and that we would have to do it as quickly as posible, because the C. I. O. were working in the plant"?

A. No, sir.

1927 Q. Are you a member of the Independent Union, Mr. Kokalj?

A. Yes, sir.

Q. Do you hold any office in that union?

A. No, sir.

Q. You are just one of the rank and file?

A. Yes, sir.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) Tell us about the conversation you had with Richard Falk before the meeting of April 8th in the cafeteria?

A. Well, he just stated to some of the members things

about the Wagner Act, the small Wagner act or Severson Bill.

Q. Tell us as closely as you can remember what conversation took place at that time?

A. Well, I couldn't tell you that, I couldn't answer that question.

Q. Who was present at that time?

A. The Works Council.

Q. In the cafeteria?

A. Yes, sir.

Q. Was it a special meeting of the Works Council?

A. I think it was a special meeting, yes, sir.

Q. By whom was it called?

A. Well, I was notified by one of the members of the
1928 Works Council.

Q. And was everybody present?

A. I don't think everybody was of the Works Council, there were one or two men that wasn't there?

Q. How was Richard Falk there, was he invited?

A. No, he come down—well, he was there when I come in, he was at the meeting.

Q. You came late to that meeting, too?

A. Well, I usually come in about five minutes late.

Q. When you came was he talking or somebody else talking? What was going on when you came into the room?

A. Well, they were all talking as far as that goes.

Q. Somebody asked Richard Falk a question about the Severson Act?

A. Not that I remember.

Q. Do you recall how he happened to explain the Severson Act?

A. No, I don't.

Q. You don't remember anything he said about it?

A. No, sir.

Q. Were there minutes made of that meeting?

A. No, sir.

Q. Do you know if any record of it was kept?

A. No, I don't.

Q. Was the entire Works Council there or just the
1929 employee representatives?

A. Just the employee representatives.

Q. Do you recall anything that was said at that meeting by anybody?

A. Well, there were a lot of questions asked, I don't remember what they were.

Q. You don't remember any one question?
A. No, sir.
Q. You don't remember any one answer?
A. No, sir.
Q. Did you say anything at that meeting?
A. No, I didn't.
Q. What did Mr. Connell say at the meeting of April the 13th?
A. I don't remember what he said, he was there only a short time.
Q. Well, you said there were some questions asked of him.
A. Yes, but I don't remember what they were.
Q. You don't remember any question?
A. No, sir.
Q. You don't remember any answer?
A. No, sir.
Q. The meeting on April 12th, is that the meeting where some of the boys were at one end of the table joking and talking?
1930 A. Well, they were on the 13th, too, as far as that goes.
Q. I am talking about the 12th.
A. Yes.
Mr. Engelhard: Will you please raise your voice, it is a little hard to hear you so far.
Q. (By Mr. Rissman) Was that the meeting you testified you probably were not paying much attention to what was going on?
I think you said, "I wasn't paying much attention to business."
A. Yes, sir.
Q. You say the same conditions existed at the April 13th meeting and at the first meeting—that is, at the first meeting of April 13th?
A. Yes, sir.
Q. Where did you work before you worked for the Falk Corporation?
A. I worked at the Perlick Brass Company.
Q. What kind of work did you do there?
A. I was doing assembly work.
Q. How long did you work there?
A. One month.
Q. Where did you work before that?
A. Nowhere.

Q. In your work of crane maintenance do you get
1931 around the different parts of the factory?
A. Yes, sir.
Q. You have no special work-bench or table, have you?
A. No.
Q. You just go out where the equipment is and perform the work there?
A. Unless something can be brought down to be repaired.
Q. In other words, if it is a small part?
A. Yes, sir.
Q. But most of your work is on the equipment?
A. Yes, sir.
Q. How long have you been a member of the Independent Union?
A. About April the 20th. I don't know the exact date I joined.
Q. 1937?
A. Yes, sir.
Q. Do you know at the present time, Mr. Kokalj, what preference Mr. Falk has for labor organizations?
A. No, I don't.
Q. Did you ever know?
A. No, sir.
Mr. Rissman: That is all.

Redirect Examination.

Q. (By Mr. Engelhard) Mr. Kokalj, did any officials of the company influence you with regard to joining the
1932 Independent Union?
A. No, sir.
Q. When did you make up your mind to join the Independent Union if one would be formed?
A. Well, the second day the applications were out. The first day there wasn't enough applications; so I didn't sign; I had to wait until the next day.
Q. Had you been approached by anybody belonging to the C. I. O. to join the C. I. O. prior to that time?
A. No, sir.
Q. Have you been approached since?
A. No, sir.
Q. You selected the Independent Union then of your own free choice?
A. Yes, sir.

Mr. Engelhard: That is all.

Q. (By Mr. Engelhard) By the way, how old are you? I don't think the record shows that.

A. 23.

Q. Are you a married man?

A. Yes, sir.

Q. Family?

A. No, sir.

Mr. Engelhard: That is all.

Trial Examiner Batten: Mr. Clark?

1933 Mr. Clark: I have no questions.

Trial Examiner Batten: That is all.

(Witness excused.)

Mr. Engelhard: Call Mr. Trost.

JOE H. TROST, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) What is your full name?

A. Joe H. Trost.

Q. Where are you employed, Mr. Trost?

A. At the Falk Corporation.

Q. How old a man are you?

A. 42.

Q. How long have you worked for the Falk Corporation?

A. Well, I am back there going on 9 years.

Q. You mean that your present tenure has been 9 years?

A. No, not altogether; about 12 years altogether.

Q. That is what I am asking you, you have worked for the Falk Corporation for 12 years but not continuously?

A. Yes, sir.

Q. Now, can you see me?

A. Yes.

Q. Can you hear me?

A. Oh, yes.

1934 Q. Now, Mr. Trost, what kind of work are you doing at the plant?

A. Assembling.

Q. How long have you been doing that work?

A. Well, I have been doing different jobs off and on; I started, when I come back there I started in shop 3, as-

sembling Diesel engines, and I was taken off and taken over to Shop 2 on some assembly couplers, and stuff like that, and from then they got a new coupling in there, they call it the Ross coupler, and I started the thing off; that is something new.

Q. You do your assembling there at the plant?

A. Yes, sir.

Q. That is, the machinery that is assembled and shipped out?

A. Yes, sir.

Q. That is the last part of the job, is it, before the machinery is shipped?

A. No, what I am doing now, that is the first part, that is the assembly before—the assembling before it gets drilled and bored.

Q. Are you a member of the Independent Union?

A. Yes, sir.

Q. When did you become a member of it?

A. I think the 20th of April.

1935 Q. You were one of the signers of the articles of incorporation?

A. Yes, sir.

Q. Now, Mr. Trost, when did you first hear of any movement to form an Independent Union?

A. On the 12th, when I was notified to come down under the hospital for a meeting.

Q. Who notified you?

A. John Brever.

Q. What did he say to you?

A. He said, the Works Council called a meeting, or the present Works Council was calling a meeting and all the old representatives were supposed to come down

Q. Were you an old representative?

A. I was.

Q. When did you leave the Works Council?

A. The last election, the last term I was off.

Q. When was the last election held?

A. I don't recall.

Q. Well, had you been a member of the Works Council to the end of the year 1936?

A. Yes, sir.

Q. Now, at the time when you were notified by John

Brever that there was a meeting in the basement of the hospital did he say to you what the meeting was for?

1936 A. No, sir, he never mentioned nothing.

Q. Well, you went to that meeting?

A. Yes, sir.

Q. What occurred at that meeting?

A. Well, Mr. Brever was chairman, he got up and he read a letter stating some facts, that the Wagner Bill, whatever it was, I couldn't use the language, and he called the meeting; they went on with the session.

Q. Well, what was discussed among the men, what did they discuss?

A. Well, there wasn't much discussion at the start; they wanted to get some dope on that Wagner Bill and the Severson Act.

Q. From whom did they want to get this dope?

A. They wanted to get it off Mr. Harold Falk.

Q. Then what happened?

A. Well, they sent out for Mr. Falk.

Q. Who was sent out?

A. Mr. Kokalj, whatever his name is.

Q. This gentlemen who was on the stand before?

A. Yes, sir.

Q. After Mr. Kokalj was sent out did Mr. Falk appear?

A. Yes, he come in.

Q. What was the conversation had between Mr. Falk and the men?

1937 A. Mr. Falk come in and he stated he didn't know much about the Wagner Act or the Severson Act as yet, and he explained further he was going downtown the following day to get some more dope on it.

Q. What else was said by Mr. Falk?

A. Well, he talked on certain things, I couldn't recall what it was all about, but there wasn't much of a conversation.

Q. How long was Mr. Falk there?

A. About 15—10 or 15 minutes.

Q. Was there anything said about a pay raise being moved up from June 1st to May 1st?

A. Yes, there was something brought up about the pay raise.

Q. Who brought it up?

A. Mr. Stichmann.

Q. What did Mr. Stichmann say?

A. He asked him if he could not raise the wages ahead a nth, to make the fellows feel more satisfied in the shop.
Q. What did Mr. Falk say to that?
A. Mr. Falk says, "Well, I ain't so stiff I can't bend."
Q. Did you hear Mr. Wilfer make a statement to Mr. lk?
A. Yes, he was talking all the time.
Q. What is that?
A. He was talking all the time.
Q. Do you recall any particular statement Mr. Wilfer 38 made at that meeting?
A. No, I never paid no attention to it.
Q. As to that meeting, was it conducted in a formal man- r? By that I mean, the men all sitting around listening to at one person said, or was there commotion?
A. Oh, they were all talking, about four or five different oups.
Q. Which group were you in?
A. I was sitting with Mr. Landry over there back of a st.
Q. Were you in a position to hear what Mr. Landry heard?
A. Well, I should have, we were talking together, I should ve heard what he did.
Q. What were you talking about?
A. A lot of nonsense, that was all.
Q. Was there any discussion at the meeting of the 12th garding organization an independent union that you heard, r. Trost?
A. There was something said about—there was something id about signing some papers, I know that. I even says Mr. Landry, I says, "Well, if you are game," I says, "I ll sign."
Q. Do you remember who said that?
A. Who made that motion or how it come about, I don't ow. It might have been said by one of the members.
Q. Was that the meeting of the 12th you are now 39 speaking of?
A. The meeting of the 12th.
Q. What papers were discussed?
A. Well, there was some discussion about incorporating, t this wasn't brought up by no officials, anything like that; at was just discussed among the men.
Q. Was there a discussion among the men as to whether

or not a union should be organized—an independent union should be organized?

A. Well, the discussion then ended, that we would have to start something.

Q. Did you know what to start?

A. I didn't know what we were going to start in the beginning.

Q. How long did that meeting of the 12th last?

A. Oh, about an hour and a half, something like that.

Q. When you were there did anyone else representing management appear?

A. On the 12th?

Q. On the 12th.

A. Nobody but Mr. Harold Falk.

Q. Now, what was the decision of the meeting before the adjournment?

A. Well, that we would meet the following day to get some more information from Mr. Harold Falk on that 1940 Severson and Wagner Act.

Q. Did you go to the meeting of the 13th?

A. Yes, sir, I attended all of them.

Q. How many meetings were there?

A. Four.

Q. On the 13th?

A. 12th, 13th, and on the 14th.

Q. You mean you attended all four meetings on the 12th, 13th, and 14th?

A. Yes.

Q. There were two on the 13th?

A. Two on the 13th.

Q. Now, who was chairman of the first meeting of the 13th?

A. Of the 13th?

Q. Yes.

A. Wolf.

Q. And the second meeting of the 13th?

A. Wolf.

Q. And the meeting of the 14th?

A. Wolf.

Q. Do you know what happened to John Brever?

A. John Brever went home sick after the meeting on the 12th; he was sick at the time of the meeting.

Q. Now, at the meeting on the 13th, the first meeting of the 13th, what occurred at that meeting?

1941 A. Well, we all got together and we wanted to find out the purpose of getting some information from Mr. Harold Falk, so we got to talking and we sent out Mr. Kokalj again to get Mr. Harold Falk.

Well, he went upstairs to try to get him and he wasn't at the plant; so young Harold Falk come down.

Q. You mean Richard Falk?

A. Richard Falk.

Q. Now, what occurred when Mr. Richard Falk came to the meeting?

A. Well, he come down, he says he didn't know—he didn't think he knows any more about it than his dad did.

Q. About what?

A. About the Wagner and the Severson Acts.

Q. What did Richard Falk say besides that?

A. I couldn't repeat none of that.

Q. Well, did you hear Richard Falk at that meeting say that you should incorporate, it would cost five dollars to incorporate, and it would take three men to sign the papers?

Mr. Rissman: I object to the question. The witness says he does not know what Richard Falk said, and now Mr. Engelhard is attempting to testify for him.

Trial Examiner Batten: I think it is all right for Mr. Engelhard to ask the question of the witness.

Mr. Rissman: The question is leading and suggestive.

1942 Trial Examiner Batten: Well, the witness has testified that he had no recollection of anything else further than was said.

Now, if Mr. Engelhard wants to ask that question, I see no objection. It may be a test of his memory.

Mr. Engelhard: Will the reporter read the question?

(The question was read.)

Mr. Engelhard: Read it again, please.

(The question was re-read.)

Q. (By Mr. Engelhard.) Did you hear Mr. Richard Falk make any such statement?

A. No, sir.

Q. Were you in a position so that you would have heard it if such a statement had been made by Richard Falk?

A. I surely could have heard it.

Q. You say you were sitting beside Mr. Landry?

A. Right alongside of him; I was sitting alongside the post and Mr. Landry was sitting west of me.

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Q. Now, at that first meeting after Mr. Richard Falk had been there for a period of time, how long would you say?

A. He was there for about ten minutes.

Q. What happened after Richard Falk left?

A. Well, after he left I don't know just—I think that meeting was adjourned a little while after.

Q. Did anyone else of management appear at that meeting?

1943 A. Mr. Connell stepped in for a while.

Q. What did Mr. Connell say?

A. Well, his answer was that he didn't know anything about that Severson Act, and then several fellows asked a couple of questions, but what they were, I don't know. He was talking with them on the other end of the table.

Q. How long did Mr. Connell stay?

A. He stayed about five minutes.

Q. Then what happened?

A. Right after that the meeting was adjourned.

Q. Now, after the meeting was adjourned what did you do?

A. I just got out and walked back to my job.

Q. Did you stay on the job the rest of the afternoon?

A. I stayed on my job until I was notified to come back to another meeting by Mr. Greget.

Q. While you were on the job did you have any conversation with any of the boys?

A. No, sir.

Q. Did you have any conversation while you were on the job with Mr. Harold Falk?

A. No, sir, I passed Mr. Harold Falk on the way going out from the meeting, the first meeting on the 13th.

Q. Did you have any conversation with him?

A. No, there were two or three other fellows talking to him at the electrical department.

1944 Q. That was between meetings?

A. In the aisle, yes.

Q. Now, you went back to the second meeting of the 13th?

A. Yes, sir.

Q. What occurred at that meeting?

A. Well, I think one of the fellows that was talking to Mr. Harold Falk must have gotten some information that they could go ahead with the Independent Union, because he called this meeting back and he told us that we could go ahead with it.

Q. Go ahead with it as to what?
A. As to going and finding out about getting any more information, where we could get it.
Q. Who reported that to you?
A. Who reported to me?
Q. Yes, that Mr. Harold Falk made such a statement?
A. Oh, he didn't make that statement; I didn't say he made that statement.
Q. You said that you then heard Mr. Harold Falk say it was all right to go ahead with the Independent Union.
A. Well, that was said by Mr. Greget when he came over and told me to come back to the meeting.
Q. Then you went to the meeting?
A. I went to the meeting.
Q. And what occurred at that meeting?
A. Well, we got together and appointed three fel-
945 lows to go and see about a lawyer.
Q. Before those three men went to see about a lawyer, was there any discussion about a lawyer?
A. Yes, sir, Mr. Padway's name was mentioned, and a fellow by the name of Fish, something like that.
Q. Was there a Mr. Quick's name mentioned?
A. Mr. who?
Q. Mr. Quick.
A. Mr. Quick?
Q. Yes.
A. Yes, I think Mr. Quick, something like that.
Q. Mr. Landry was sitting right near you, wasn't he?
A. Yes, sir.
Q. Did you hear him mention Mr. Padway and Mr. Quick?
A. He either mentioned Mr. Padway or Mr. Quick, one of the two, I couldn't say which one he mentioned.
Q. Was any other lawyer mentioned?
A. No, sir.
Q. After those lawyers' names were mentioned what was discussed?
A. Well, there was a discussion, to get three fellows together to go up and find out about a lawyer.
Q. Go where?
A. Well, they didn't state where they should go, but they decided they were going and ask management, I guess.
946 Q. That is, the boys decided that the three men should go to see management about a lawyer?
A. Yes, sir.

Q. Was this before the committee was appointed or after the committee was appointed?

A. After the committee was appointed.

Q. Was the committee given any instructions that you heard as to what the committee should do?

A. Well, they wasn't instructed just what they should do, no.

Q. How long was the committee gone?

A. Oh, I guess we were waiting around there about half an hour, talking foolishness until they come back.

Q. Did the committee make a report when they came back?

A. Well, they come back and said there were two or three lawyers mentioned by one of the officials, or officers, I don't know which one, I wasn't there; they decided they would take Mr. Burke, I guess.

They asked me if I was satisfied, and I says, "I don't care, as long as you get somebody that knows the setup, that was all I was in favor of. I didn't want no green-horn at it."

Q. Now, after that report was made what happened?

A. Well, they got together and get a collection.

Q. One dollar from each man?

1947 A. Yes, I even paid out five dollars at that time, for fellows that didn't have any.

Q. How much money did they collect?

A. Seventeen dollars.

Q. And out of that seventeen dollars you say you paid five?

A. Four or five.

Q. What was that collection for?

A. Attorney's fees.

Q. Was there any arrangement made at that meeting, that is, the second meeting of the 13th—

A. Yes, sir.

Q. —about anybody going down to see Mr. Burke after the committee reported?

A. Well, yes, they had an appointment, I guess, for ten o'clock the following day, the three fellows.

Q. Yes?

A. And I am pretty sure they went down.

Q. I mean after the meeting of the 13th, the second meeting of the 13th, was there any arrangement made for these three men and others to go down and see Mr. Burke?

A. Yes, there were some more to go along.

Q. Did you go there?
A. Yes, sir.
Q. How many men went to Mr. Burke's office?
A. I couldn't recall, there were about ten of them.
1948 Q. How were those ten men selected, do you remember?
A. Well, from the meeting.
Q. Who selected them?
A. The chairman.
Q. Did he pick out ten men or did some of the men voluntarily go down?
A. Some of them volunteered and some of them he picked.
Q. But finally it was agreed that the nine or ten should go down?
A. Yes, sir.
Q. You went down?
A. Yes, sir.
Q. Now, was Mr. Harold Falk present at any of those meetings on the 13th?
A. No, sir.
Q. The only meeting—the only one of the meetings on the 12th, 13th, two, and the 14th, one, the only meeting Mr. Harold Falk was present at was the one on the 12th?
A. The one on the 12th.
Q. And what occurred at Mr. Burke's office?
Trial Examiner Batten: I believe we will recess for about ten minutes, Mr. Engelhard, before starting on the next meeting.
Mr. Engelhard: I am glad to have the recess, Mr. Examiner.
1949 Trial Examiner Batten: And let's make it ten minutes so that we can make up the ten minutes or so we lost this morning.
(A short recess was taken.)
Trial Examiner Batten: I believe we are ready to proceed.
Mr. Engelhard: What was the last question?
(The record was read.)
Q. (By Mr. Engelhard.) Will you tell us in substance what occurred at Mr. Burke's office?
A. Well, we all got down there and Mr. Burke come in and we asked him about what he knew about setting up a union, and he started explaining certain things about how far we could go and what we could do, and Mr. Clark come

in and started reading certain sections out of the Severson Act, different clauses, what we could do, and all that, and during that time, why, he was interrupted by one of the men, he asked Mr. Burke, he says, "Now, before we go any further we have only seventeen dollars among us," he says, "what is the fees going to be?"

And Mr. Burke says, well, he says, "If I set this thing up and it goes through," he says, "I will charge you; if it don't, why, we will just simply have to drop it," and that was all, so then he went ahead.

Q. How long did this meeting in Mr. Burke's office last?

1950 A. Oh, about two hours or so, something like, or a little longer.

Q. After that meeting in Mr. Burke's office you had a meeting in the basement of the hospital that afternoon?

A. Yes, sir.

Q. What was that meeting about?

A. Well, that meeting, we went back—well, everybody got his dollar back that was collected the day previous, and discussed different matters.

Q. Was there any decision made at that meeting as to whether or not an independent union would be incorporated or it would be an association?

A. Well, there was nothing said down there, only that these three fellows were supposed to go down the following day. That arrangement was made up at the lawyers' office, that these three fellows were to go back down the following day.

Q. What three fellows?

A. Mr. Greget, Mr. Wolf and Mr. Adamsky.

Q. How long did that meeting on the 14th last?

A. Just a short while.

Q. There were no members of management of the Falk Corporation present at the meeting on the 14th?

A. No, sir.

Q. I don't know whether I asked you this question or not, but was Mr. Harold Falk at any meetings other than the 12th?

1951 A. No, sir.

Q. You were at four meetings during the entire time the meetings were in session?

A. Yes, sir.

Q. Were you at the meeting of the 8th of April, the last Works Council—

A. No, sir.
Q. You were not?
A. No, sir.
Q. Someone testified here last week that you were a foreman or a straw-boss or something.
Were you ever a foreman?
A. Not that I know of.
Q. Were you ever a straw-boss?
A. Not that I know of.
Q. Well, did you ever have charge of any men?
A. I never had charge over men, I had charge over certain work I had to put together, and I would suggest that it was done right, that was all.
Q. Did you ever have any men when working with you, under your supervision?
A. No, I never supervised anybody.
Q. In making some of these assemblies it takes more than one man to do the job?
A. Yes, it takes about five or six on some of them.
952 Q. When there were assemblies made in which five or six men worked, does one man take the lead?
A. Yes, one of them takes the lead. The boss puts one of them at the lead, to see it is put together.
Q. The boss designates the men who are to work together?
Trial Examiner Batten: Would you say now the boss designates the man who is going to be the lead man?
The Witness: Well, he picks out the one he figures that can watch the job best and he puts him at the head of it.
Q. (By Trial Examiner Batten.) These five or six men, you mean they are all mechanics or some helpers?
A. Some helpers and some mechanics.
Q. Has it ever occurred in your experience when you were assembling a machine that you had to direct some of the men how to do the work, how to put it together?
A. Well, they generally make a practice at the Falk Company, to send apprentices around.
Q. Apprentices?
A. Apprentices, young fellows just learning the trade come over and want to learn how.
Q. And you have to direct them?
A. Well, show them just what it is all about, yes.
Q. When you are assembling this machine you are responsible for it being properly assembled.
A. Yes.

1953 Q. Don't you have to tell the men that are helping you how to do it, if they are doing it wrong?

A. Yes.

Q. You direct them as to the work they are doing on that assembly?

A. On that assembly, yes.

Q. (By Mr. Engelhard.) Now, Mr. Trost, after the meeting of the 14th, at which meeting you said it was decided that three men would go down to Mr. Burke's office the following day, what happened between the 14th and the 18th with regard to forming an independent union?

A. Well, between the 14th and the 18th, why, that was mostly set up between some of the other fellows, I didn't have no hand in that at all.

Q. Were any application blanks printed?

A. Yes, there was some application blanks printed.

Q. Do you know who made arrangements for printing application blanks?

A. Down at the lawyers' office, that was arranged down there.

Q. And do you know who actually attended to printing the application blanks?

A. No, I couldn't tell you who done that.

Q. Now, were you present at the meeting of the 18th at the North Avenue Auditorium, on Sunday the 18th of April?

1954 A. Yes, sir.

Q. Will you tell us what occurred at that meeting?

A. Well, there was a meeting called up there and a lot of fellows got there and they opened up the meeting. I guess they got Mr. Price as chairman of that meeting, and they made a hell of a rumpus, practically it was a disturbance all through the whole meeting.

Q. (By Trial Examiner Batten:) What was the disturbance about?

A. Well, just questions coming up among the fellows.

Q. What questions?

A. That I couldn't tell you.

Q. You can't remember any question that caused any disturbance?

A. Well, there was some C. I. O. fellows got up, and fellows got up and got talking about the C. I. O., and got talking about everything else.

Q. (By Mr. Engelhard.) Well, was there any action taken at that meeting by the meeting?

A. Well, they went through; as far as the chairman was, why, he tried to keep the meeting in order but he had a hell of a time doing it.

Q. Who addressed the meting?

A. Who addressed the meeting?

Q. Yes.

1955 A. Well, Mr. Greget, and some guy spoke there, and if I ain't mistaken Mr. Landry said something, I don't know what he said.

Q. Anybody else?

A. Nobody else that I know of.

Q. Well, was Mr. Burke there?

A. He was called on, yes.

Q. Did he speak?

A. He answered some questions.

Q. Well, what was the final action of the meeting, if there was any action taken at that meeting?

A. Well, there was no action taken as far as I know; it just simply was a flop to my estimation, I don't know; they didn't get nowhere with that meeting.

Q. Well, after the meeting had adjourned did you have any conversation with Mr. Burke?

A. Yes, I was talking to Mr. Burke down in a bar room.

Q. And with whom else were you talking?

A. Well, Mr. Greget was there and several other fellows, and I guess Mr. Greget went home.

When Mr. Wilson approached Mr. Greget and asked him if it was all right, if he could get two or three more signers, if he would come down on Monday morning and sign this thing, the corporation papers, if it would be all right to go ahead with the thing, and Mr. Burke said he didn't see 1956 why it shouldn't be.

So I offered Mr. Wilson, if he would sign, I would sign; if he got another fellow, why, we would go down there Monday.

Q. What was done?

A. Well, Monday morning Mr. Wilson come over and he says he had another fellow, so we punched out and went down to the lawyers' office.

Q. What did you do?

A. Well, we sat down and had him explain the whole thing to us, and we signed it.

Q. What did you sign there?

A. The corporation papers.

Q. Do you know what was done with this—with those incorporation papers that day?

A. They were sent to Madison.

Q. Now, that was on the 19th?

A. Yes.

Q. Now, do you recall signing a letter with Mr. Wilson and Mr. Menz addressed to the Falk Corporation on the 20th?

A. Yes, sir.

Mr. Engelhard: Mr. Rissman, do you know what the number of that exhibit is?

Mr. Rissman: Which one?

Mr. Engelhard: That letter of the 20th.

Mr. Rissman: 22, I think.

1957 Q. (By Mr. Engelhard.) I show you Board's Exhibit No. 22, Mr. Trost, and ask you whether or not you signed that letter with Mr. Menz and Mr. Wilson?

A. Yes, sir, that is my handwriting on there.

Q. Do you know whether that was delivered personally or whether that was mailed?

A. I think it was delivered personally if I ain't mistaken.

Q. Well, who delivered it?

A. I didn't deliver it.

Q. Now, did you have a conference with Mr. Herman Falk and Mr. Connell?

A. Yes, sir.

Q. On the 23rd?

A. On the 23rd.

Q. I will show you Board's Exhibit No. 21, and ask you whether or not you have ever seen the original of that?

A. Yes, sir.

Q. Will you explain how you obtained the original of that?

A. How we obtained it?

Q. Yes.

A. Well, we were called in to Mr. Falk's office.

Q. Who called you in?

A. I don't know, I was told to come in with Mr. Wilson: that is all I know.

Q. You, Mr. Wilson and Mr. Menz went to Mr. Her-
1958 man Falk's office?

A. Yes, sir.

Q. In response to a call?

A. Yes, sir.

Q. And you had a conversation with Mr. Falk?

A. Yes, sir.

Q. Was Mr. Connell there?

A. Yes, he was around there.

Trial Examiner Batten: Mr. Engelhard, I wonder if you would mind asking him who called him in this meeting.

Q. (By Mr. Engelhard.) Do you know who called you in?

A. I was notified by Mr. Wilson.

Q. This was three days after you had sent this letter of the 20th to the Falk Corporation?

A. I think—I don't know exactly whether three days or four days.

Q. Well, this letter, Board's Exhibit No. 21, is dated the 23rd. You had previous to that sent Exhibit No. 22, which is the letter of the 20th?

A. I didn't send it, no.

Q. What is that?

A. I ain't the one that sent it; I didn't send any of them letters.

Q. Well, did you sign the letter of the 22nd?

A. I signed it.

1959 Q. You don't know just who did the physical work of sending the letters?

A. No, I don't know that.

Q. Who acted as chairman of this committee of three, Mr. Wilson, you, or Mr. Menz?

A. Well, Mr. Wilson was president.

Q. Well, was he president at that time?

A. How?

Q. Was he president on the 23rd?

A. After the meeting we had on the following Saturday.

Q. That was on the 24th?

A. On the 24th.

Q. I mean prior to that time, you, Mr. Wilson and Mr. Menz were the organizers of the corporation?

A. Yes, sir.

Q. You signed the incorporation papers?

A. Yes, sir.

Q. And it was not until the 24th that you had a meeting at which the union was organized?

A. Yes, sir.

Q. The Independent Union was organized.

A. Yes, sir.

Q. (By Trial Examiner Batten.) Mr. Trost, the question Mr. Engelhard asked you was, who acted as chairman of this committee, or was it in charge of by anybody?

1960 A. Mr. Wilson.

Q. (By Mr. Engelhard.) At this conference in Mr. Falk's office on the 23rd who was spokesman?

A. Mr. Wilson.

Q. What occurred at that conference, what did Mr. Wilson say, what did you say and what did Mr. Lenz say?

A. I couldn't recall the words he said.

Q. Well, give us the substance of the conversation?

A. I didn't say nothing at all according to that.

Q. What did any of the men say at that meeting? Let me put it this way: what were you there for?

A. I think Mr. Wilson was to go up and find out whether the Falk Company would "represent" the union.

Q. Whether the Falk Company would what?

A. "Represent" the Independent Union.

Q. What do you mean by that, whether the Falk Company would "represent" the union?

A. "Accept them", I mean.

Mr. Clark: Recognize them.

The Witness: Recognize them, that is what I mean.

Q. (By Mr. Engelhard.) What did you say, what did you gentlemen say to Mr. Falk and Mr. Connell as to the membership that the workers represented?

A. Well, he was supposed to call us in on a later date on that, I guess. I don't recall that.

1961 Q. Now, after the 23rd you said you had an organization meeting at the North Avenue Auditorium?

A. Yes, sir.

Q. At that meeting by-laws were adopted?

A. Yes, sir.

Q. And a board of directors elected?

A. Yes, sir.

Q. And the board of directors—

A. Elected the president.

Q. And elected the officers?

A. Yes, sir.

Q. Now, what would you say was the purpose of these meetings that were held in the basement of the hospital?

A. To get some dope on how far we could go in setting up a union, get information on the Wagner Bill to see what we could do about it.

Q. And when you got the dope on what you could do under the law you proceeded to organize?

A. Yes, after we got the dope, we got the dope from the lawyer.

Q. Well, didn't you get what you called "dope" from Mr. Harold Falk and Richard Falk?

A. No, we didn't know no more after they left than wha e did when they got there.

Mr. Lamfrom: Off the record, now, please.

962 (Discussion off the record.)

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) You signed the articles of incor- oration?

A. Yes. sir.

Q. Did you read them before you signed them?

A. I certainly did.

Q. Did you know at the time you signed them that there ould be a meeting of the members only once a year?

A. The general meeting, yes.

Q. Did you know also when you signed it that the affairs f the corporation would be conducted by the board of di- ectors?

A. Yes. sir.

Q. And did you know that the officers are elected, not by he members, but the board of directors?

A. Yes. sir.

Q. You knew all of those things?

A. Yes. sir.

Q. Will you answer? When you shake your head it does ot appear in the record.

A. Yes. sir.

Q. You felt that was the kind of organization you wanted to represent the Falk employees?

963 A. Well, I didn't know they was going to go through with it or not; that was what I wanted to have go hrough, yes; that was why I signed it; I figured it was the ight and fair thing to do.

Q. You read the by-laws of the corporation?

A. Yes, I read the by-laws that we had temporarily set p, yes.

Q. You felt those were proper rules and regulations for he operation of the union to represent the Falk employees?

A. To start with, yes, and have the members of the union change them the way they see fit.

Q. At the next annual meeting?
A. Yes. sir.
Q. When is the next meeting of employees going to be held?
A. This next one now that we are going to have?
Q. The next meeting of employees, the next meeting of stockholders and members of the corporation?
A. The one that is coming—
Q. The next one.
A. Next Saturday.
Q. Is that the next annual meeting?
A. Yes, that is the next meeting we have got.
Q. You read this letter of April 20th, 1937, before you signed it?
A. I glanced over it, yes.
1964 Q. You read it?
A. I certainly did.
Q. At that time did you read the following part of this letter addressed to the Falk Corporation of April 20th, 1937:
"We are informed that approximately 400 employees of this corporation have signed applications to date."
Now, did you know that 400 had signed applications?
A. I was pretty sure of it.
Q. How were you pretty sure of it?
A. The applications.
Q. Did you count them?
A. No, I did not count them.
Q. "We have good reason to believe that a majority of employees eligible for membership will become members of this organization."
Did you read that?
A. Yes. sir.
Q. How did you know that?
A. Well, I talked to the fellows.
Q. How many did you talk to?
A. How many did I talk to.
Q. Yes.
A. Oh, I talked to quite a few of them.
Q. Did you talk to 300?
A. No, not exactly, I wouldn't say 300, no.
1965 Q. Well, after this letter was sent to the Falk Corporation Mr. Herman Falk sent this reply that is in evidence as Exhibit 21.
Mr. Engelhard: There is no evidence he sent that as a reply. He testified that he got that while he was at that conference on the 23rd.

Q. (By Mr. Rissman) Where did you get this?
A. Well, I think Mr. Wilson got it, yes, I didn't; I was th him.
Q. Now, at the meeting of April 23rd when this was given Mr. Wilson what evidence of the number of employees that on had in your organization was given to Mr. Falk?
A. Of the number of members?
Q. Yes.
A. I couldn't recall just the amount.
Q. Well, was it merely somebody's statement or was he own some application cards?
A. He must have got it off the application cards, I guess.
Q. Well, at the time this was written did you see any plication cards at this meeting?
A. At that first union meeting?
Q. No, at this meeting of April the 23rd when this was ven to the committee.
A. I didn't see any application cards at that time, no.
Q. You read this letter at that time?
966 Mr. Engelhard: You mean the original of that, do you not, Mr. Rissman?
The Witness: Not this one.
Q. (By Mr. Rissman) Or one like it?
A. I read something like it, yes.
Q. You read it?
A. Just like it.
Q. Now, this letter says—it is addressed to Fred Wilson, oseph Trost and Carl Menz and is signed by Herman W. alk, president, Falk Corporation.
"After conference with your committee, and upon your atement that your organization represents the majority of ur employees and that you request that we enter into negoations with you as the collective bargaining agency for all our employees, we advise you that we will so recognize our organization."
At that time what other than the mere statement was given Mr. Falk, indicating the number of members in your union?
A. Just a statement, that was all.
Mr. Lamfrom: Mr. Rissman, I want to find out, if I may sk, in these articles of incorporation, Exhibit 26, and the y-laws, Exhibit 27, that there is a meeting of the members of he organization, once a year—you asked that question—and I would like to have you point out where you find that.
967 Mr. Rissman: Will you wait until I finish by cross-examination.

Mr. Lamfrom: Sure, but sometime after that I would like to have you point out where you found that.

Mr. Rissman: I will.

Q. (By Mr. Rissman) You said that on April the 13th Mr. Harold Falk did not appear at either one of the meetings, either in the morning or afternoon.

A. Yes, sir.

Q. But you said when you were gone out of the meeting you did see him talking to two or three fellows?

A. I seen just two fellows stop him and start talking at the electrical department.

Q. Do you know who were those fellows?

A. One was Les Greget.

Q. Do you know who the other was?

A. I think Mr. Wolf, if I ain't mistaken.

Q. (By Mr. Engelhard) Just one question, there, so that we can get it clear.

This electrical department is how far from the hospital, Mr. Trost?

A. Well, I would say about 250 to 300 feet, something like that.

Q. (By Mr. Rissman) Do you know how long Mr. Falk had been standing there talking to these two men?

1968 A. No, sir, I couldn't recall that, because I just walked by and went back to my work.

Q. You don't know if there were more than just three of them before you came by, do you?

A. No, sir.

Q. Or you don't know if anybody else came up after you passed?

A. They just met Mr. Falk at the time and I kept on walking; they stopped and talked to him.

Q. Do you know if anybody else came up there after you kept on walking?

A. That I don't know, because I kept on going.

Q. How were the corporation papers sent to Madison on the 19th of April?

A. How were they sent?

Q. Yes.

A. Through Mr. Clark.

Q. Do you know if they were sent by mail or by special messenger?

A. That I couldn't say.

Q. But they were signed by you three men on the 19th?

A. Yes. sir.
Q. Will you answer for the record, please.
A. Yes. sir.
Mr. Rissman: That is all.
1969 Mr. Lamfrom: I now ask you if you will point out where there is anything in the articles or by-laws, which are exhibits, which show that there shall be a meeting once a year of the members of this corporation.
Mr. Rissman: I submit, if the Examiner please, that the articles and by-laws are in evidence and the witness has testified what he knew about them, and I am not to answer any questions from Mr. Lamfrom—
Mr. Lamfrom: Just a minute, I will take care of this efficient answer.
Trial Examiner Batten: May I see the exhibits, please.
I think we will recess for about five minutes, if there is no objection.
Mr. Lamfrom: We never seem to have any objection to the recess.
Trial Examiner Batten: Well, I mean as long as you are going to go through those papers.
Mr. Lamfrom: Yes.
(A short recess was taken.)
Mr. Lamfrom: Will the reporter read back the questions put to this witness by Mr. Rissman about the articles and by-laws, I don't know whether he referred to the by-laws or articles of incorporation, about the annual meeting of the members.
(The record was read as directed.)

1970 *Redirect Examination.*

Q. (By Mr. Lamfrom) Now, Mr. Trost, when you went to the office of Mr. Burke you said you read these articles of incorporation.
A. Yes, I read them over.
Q. Now, do you at this time know what is in these articles without refreshing your memory?
A. No, sir.
Q. Do you know whether there is anything in the articles of incorporation about meetings?
A. Something in there about meetings, certainly.
Q. Do you know what the specific provision is?
A. Well there is to be an annual meeting and a meeting every month.

Q. Do you know whether that is in the articles of incorporation or whether that is the by-laws?

A. I think the by-laws.

Q. I am speaking about the articles of incorporation.

A. I couldn't tell you offhand if it is in there or not.

Q. Do you know what the articles of incorporation or by-laws provide with regard to meetings? I mean, you have a memory of them now.

A. Well, yes, they can call a special meeting if they want to.

1971 Q. Well, do you know what the specific provision of the by-laws is with respect to such meetings?

A. What do you mean, the routine on it, to have—

Q. Yes.

A. Well, the board of directors can call—

Q. I am asking you, Mr. Trost, whether you have in mind now the provision contained in the by-laws pertaining to such meetings.

A. No, I haven't.

Q. Do you know that there is an annual meeting of the members?

A. Yes. sir.

Q. That is to be held on the first Sunday in May, beginning with the year 1938?

A. That is the regular meeting.

Q. That is the annual meeting, and you know that "a special meeting of the members of said corporation may be called at anytime by the president, or by seven (7) members of the board of directors, provided at least two days' notice be given to the members thereof, such notice to be given as required for the annual meeting of said corporation. Regular monthly meetings of the members will be held on the first Saturday in each month at the hour of 2:30 P. M."

Does that refresh your memory now?

A. Yes, sir.

1972 Q. So you have monthly meetings of the members?

A. Every month, yes, sir.

Q. Then it is not true that the membership of the Independent Union of Falk Employes meets once a year?

A. No.

Q. You have had monthly meetings of the members?

A. Yes, sir.

Q. Since you organized?

A. Every month.

Q. You say your next meeting is next Saturday?
A. Next Saturday is our next meeting.
Q. You can have special meetings besides your regular monthly meetings?
A. Yes, sir.
Q. If they are called.
A. Yes, sir.
Q. You can have meetings every day if they are called.
A. Twice a day if we want them.
Mr. Lamfrom: Yes. That is all.

Recross Examination.

Q. (By Mr. Rissman.) What do you understand "annual meeting" to mean, Mr. Trost?
Mr. Lamfrom: Now, I submit, your Honor, that these articles and by-laws speak for themselves. This witness cannot change the meaning of the articles or by-laws by what
1973 he understands them to mean, and it is certainly of no consequence in the issues in this case.
Trial Examiner Batten: Well, of course, I think the by-laws and articles speak for themselves.
Mr. Lamfrom: Certainly, and he cannot change them by any interpretation.
Mr. Rissman: I just want his one answer to this question and then I am through.
Trial Examiner Batten: Of course this witness signed the articles and presumably read them at the time, and was the organizer of it; so I think he is qualified to speak as to what he thinks it means. If he isn't, I don't know who would be.
Being one of the organizers and signers of the original articles, I think he is qualified to state what is meant when he signed it. If there is any question concerning contracts certain of the parties thereto have a perfect right to express any opinions they have with respect to the intent.
Mr. Lamfrom: That is true, but the person should first be given an opportunity to read over the provision of the contract if he is going to be asked questions.
Trial Examiner Batten: Let him read it over, if you prefer that.
Mr. Rissman: If the Examiner please, this question is not based upon what is in the by-laws at all; I merely asked
1974 the witness what he understood an annual meeting to mean.

Trial Examiner Batten: What was the question please.
(The question was read.)
Trial Examiner Batten: You may answer.
The Witness: An annual meeting?
Q. (By Mr. Rissman.) Yes.
A. Well, at the time I suppose I said it was once a year, but as far as I know an annual meeting is once a month.
Q. What is the difference between an annual meeting and a monthly meeting?
A. Well, an annual meeting is supposed to be once a year and monthly meetings every month.
Mr. Rissman: That is all.

Redirect Examination.

Q. (By Mr. Engelhard.) Mr. Trost, do you know what the statute of the State of Wisconsin requires as to meetings of corporate members?
A. I don't get the drift.
Q. You are not a lawyer.
A. No, sir, not by any means; I only went to grade school.
Q. You don't know whether the provision for annual meeting is required by statute or not, do you?
A. No, sir, I don't.
Mr. Engelhard: That is all.
Mr. Rissman: No questions.
1975 Trial Examiner Batten: Mr. Clark?
Mr. Clark: I have no questions, no.
Trial Examiner Batten: That is all.
(Witness excused.)
Mr. Engelhard: Mr. Mitschka.

JOHN MITSCHKA, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) Mr. Mitschka, how do you spell your name.
A. John Mitschka. M-i-t-s-c-h-k-a.
Q. How old are you?
A. 47.
Q. Are you an employee of the Falk Corporation?

A. Yes, sir.
Q. Are you a married man?
A. Yes, sir.
Q. Have a family?
A. Yes, sir.
Q. How long have you been employed by the Falk Corporation?
A. 26 years last March.
Q. How old were you when you started to work?
A. 21.
1976 Q. Were you an apprentice when you started?
A. No, sir.
Q. What type of work do you do now?
A. Pattern maker.
Q. Pattern maker?
A. Yes, sir.
Q. That is your trade?
A. Yes, sir.
Q. Have you been a pattern maker during these 26 years?
A. Yes, sir.
Q. Have you been on the job steadily during the 26 years?
A. Yes, sir.
Q. Except for vacations, have you ever had any lay-offs?
A. Very few.
Q. What is that?
A. Very few.
Q. Very few?
A. Yes, sir.
Q. Now, John, in what department are you employed?
A. In the pattern shop.
Q. And who is your foreman?
A. Mr. Schmidt, Walter P. Schmidt, that is, he is called the superintendent, and Frank Gauer is called assistant.
Q. Were you ever a member of the Works Council?
A. Yes, sir.
1977 Q. When were you a member?
A. From its beginning until the end of 1935.
Q. And you were not on the Works Council during the year 1936?
A. No, sir.
Q. Or 1937?
A. No, sir.
Q. Can you see me now?
A. Yes, sir.

Q. Without stretching your neck?
A. Yes, I could see you before too.
Q. Did you attend the meeting of April 8th?
A. No, sir.
Q. Of the Works Council?
A. No, sir.
Q. Did you attend a series of meetings in the basement of the hospital?
A. Yes, four of them.
Q. Four of them?
A. Yes, sir.
Q. And how did you come to attend the first meeting?
A. Some man came over to my bench and told me I was requested to a meeting below the hospital, that the Works Council is calling for its members and ex-members.
Q. Did you know what the meeting was to be for?
1978 A. No, sir.
Q. Who called you?
A. I couldn't say.
Q. Was this by word of mouth—
A. Yes, sir.
Q. —call?
A. Yes, sir.
Q. When was this first meeting?
A. Monday, April 12th.
Q. You went to that meeting?
A. Yes, sir.
Q. Were you there before the meeting was started?
A. I couldn't say.
Q. Well, who was the chairman of the meeting?
A. Mr. John Brever.
Q. What did he do in the opening of the meeting?
A. Well,—
Q. Well, I will ask the question directly: Did you hear John Brever read a letter to the group?
A. It seems to me he did, yet I wouldn't be positive on that, but if he did read this letter, he was talking with it, and then he made the statement that pretty soon the Works Council would be outlawed, and there will be something we will have to do about it, either join one or the other union or join no union at all, but there won't be no Works Council
1979 meeting, so for that reason he wanted us there to see what we thought would be best to do.

Q. After he made that statement, was there a general discussion among the men?

A. Yes, sir.

Q. What was the nature of the discussion?

A. Well, I couldn't just repeat the words, but I suppose some of them—

Q. Give us the substance of what the discussion was.

A. Some of them felt as though any outside organization would be all right, and the majority, to the best of my knowledge, felt that we should start a union of our own because we know our problems that are in the plant.

Q. Was there any discussion as to whether or not a union of your own could be organized under the law?

A. I don't recall, not at that meeting.

Q. Now, did anyone representing the Falk management appear at that meeting of the 12th?

A. I believe Mr. Harold Falk was called in there to that meeting.

Q. Do you know how he happened to be called in?

A. I couldn't say, no.

Q. Do you know who called him in?

A. No, sir.

Q. When you say he was called in, was there any dis-
1980 cussion about calling in Mr. Harold Falk before he came?

A. I think there was some mention about it, about someone should give us an idea of what that little Wagner Act means, and it was decided to see Mr. Falk to see if he could give us any idea.

Q. Now, then, Mr. Falk came in after he was sent for?

A. Yes, sir.

Q. You don't know who went for him.

A. No, sir.

Q. Do you recall what the discussion was between the men and Mr. Falk after he came in?

A. Well, to the best of my knowledge he was asked what he knows about this little Wagner Act and the Severson Act, whatever you call it, and he told us that there is very little that he knows about it because he is not a lawyer, and he would go downtown, like Tuesday morning, and he will try to find out more about that for us.

Q. Well, now, at that meeting, were there any discussions between Mr. Falk and any of the men regarding a raise that you heard?

A. Yes.

Q. Who engaged in that discussion?

A. Well, there was one—there was more than one statement made on that same principle.

Q. Well, who—who do you remember asked Mr. Falk
1981 any questions, if there were any questions asked Mr. Falk?

A. I couldn't say who the party was that made the question, no.

Q. Did you hear any question put to Mr. Falk?

A. Yes, sir.

Q. What was the question?

A. Well, one of them was, "Mr. Falk, if you can move that raise that you had promised for June 1st, if you move that up to May 1st, don't you think that a lot of men would stay out of the C. I. O.?"

Another one was, "Mr. Falk, if you move that raise from June 1st to May 1st, it would make the men in this plant feel much better, and you would have more contentment."

Now, I don't know which one of the two questions he answered. but he did give an answer.

Q. What was his answer, did you hear that?

A. Something to the effect that there is no such thing as you couldn't give in once in a while more than you really should, and he thinks he could move that raise up thirty days.

Q. Now, was there anything else said at that meeting that you remember between Mr. Falk and any of the men?

A. Not to my recollection.

Q. Now, what was said about forming an independent union at that meeting by Mr. Falk?

A. By Mr. Falk?

1982 Q. Yes.

A. Nothing at all to my knowledge.

Q. What was the final action of that meeting of the 12th?

A. The final action of that meeting of the 12th was after quite a lengthy discussion, then we returned because we wanted to get more information from Mr. Falk as to the small Wagner Act, and he said he would go downtown Tuesday and "I may be able to get you more information."

So we adjourned until Tuesday afternoon.

Q. What did you want to know about the small Wagner Act?

A. Whether it would be legal to start an independent union.

Q. Well, up to the time of the close of the meeting of the 12th, you gentlemen did not know whether it would be legal or not?

A. At least I didn't.

Q. Now, then, the next day there was another meeting?

A. Yes, sir.

Q. Did you attend that meeting?

A. Yes, sir.

Q. What occurred? As a matter of fact there were two meetings.

A. Yes.

Q. On the 13th.

A. Yes.

Q. Did you attend both of those meetings?

1983 A. Yes, sir.

Q. What occurred at the first meeting?

A. The first meeting was a very short meeting because we expected an answer from Mr. Falk and Mr. Falk was not in the plant, so I believe that meeting didn't last more than half an hour and we adjourned to the best of my knowledge.

Q. Do you recall whether or not anybody representing the Falk management was at that first meeting?

A. I don't remember.

Q. Do you remember Mr. Richard Falk being at any of the meetings on the 13th?

A. No.

Q. Don't you remember whether Mr. Richard Falk was at any of those meetings?

A. He was at one meeting below the hospital, but now I don't know which meeting it was, whether it was the Monday meeting or one of the meetings on Tuesday or the Wednesday meeting, but he was at one of the meetings.

Q. You do know though that he was at one of the meetings.

A. He was at one of the meetings.

Q. Yes. Now, do you know what he said while he was at that meeting?

A. I believe he give us his version of the small Wagner Act in short words and terms.

Q. Well, do you recall what questions were asked?

1984 A. What the Wagner Act means.

Q. Do you mean the National Wagner Act or the small Wagner Act?

A. No, the small Wagner Act, the Severson Act.

Q. By that you mean the Severson—
A. Yes, sir.
Q. —bill.
A. Yes, sir.
Q. What did he say about what the small Wagner Act means?
A. He said that hereafter the Works Council would have to be abolished because under the Small Wagner Act there is no Works Council to be held on company premises.
Q. Did he say anything about forming an independent union?
A. Not to my knowledge, no, sir.
Q. Did you hear him say anything about the cost of incorporating?
A. No, sir.
Q. Did you hear him make a report that it would cost $5 to incorporate?
A. No, sir.
Q. Did you hear him say whether or not the boys ought to incorporate or should incorporate?
A. No, sir.
Q. Well, did he say that?
A. Well, I didn't hear it.
1985 Q. Well, could you have heard him if he had said that?
A. I could have heard him if he had said it loud enough, because I was sitting on the other end of the table, but if he said it I didn't hear it because there were groups talking all over.
Q. Now, at that meeting on the 13th do you recall whether Mr. Connell came in?
A. No, sir.
Q. Do you remember him being at the meeting?
A. No, sir.
Q. You said before that that meeting lasted about half an hour?
A. Yes, sir.
Q. And then adjourned?
A. Yes, sir.
Q. What did you do during the intermission?
A. I went back to my bench.
Q. How did you happen to go to the second meeting of the 13th?
A. Well, it wasn't very long, maybe half an hour or three

uarters of an hour after I was back at my bench at work, hen either Mr. Schmidt or Mr. Gauer came over to me and ys "They want you right back below the hospital, Mr. Falk me back."

Q. That is what you were told?

A. That is what I was told, yes, sir.

986 Q. Now, when you went over there to the second meeting, were you there at the commencement of the cond meeting?

A. Yes, sir.

Q. And you were there at the end of it?

A. Yes, sir.

Q. Did Mr. Falk appear at all at that second meeting?

A. No.

Q. Did you attend the meeting on the 14th?

A. Yes, sir.

Q. Was Mr. Falk at that meeting?

A. No.

Q. Now, going back to the second meeting, what occurred the second meeting of the 13th?

A. Someone made the report that Mr. Falk had found out at it would be perfectly legal to go ahead and start form- g an independent union if we so wished.

Q. Do you remember who made that report?

A. No, sir.

Q. To the meeting.

A. I do not.

Q. Now, after that report was made, then what did the eeting do about it?

A. Well, after that report was made then the question ose as to how to start that, and naturally the first thing you think of is an attorney—excuse me—there were

987 two or three names mentioned, I don't recall either one of them, and as close as I remember, it was myself that ggested go to see Mr. Falk, if he could recommend an at- rney that had experience in labor problems.

Q. Well, how was your suggestion received?

A. Very favorable.

Q. What was the action on your suggestion?

A. The action on it was that there was a committee ap- ointed to go to see Mr. Falk, to see what he had to say out it.

Q. Who were put on that committee?

A. Mr. Greget, Mr. Adamski and myself.

Q. Well, after you were appointed, did you receive any instructions from anybody as to what you should do?

A. Just from the chairman, to go over and see Mr. Falk.

Q. Did you go?

A. Yes, sir.

Q. Now, will you tell us what occurred when you got over there? I assume that you went to the office of Mr. Falk?

A. Yes, sir, we did.

Q. Will you tell us what occurred?

A. When we got in Mr. Falk's office we told him that we have that meeting down there, and it was decided to go and see him, whether he could recommend an attorney to give us a start with the Independent Union.

1988 Well, at first, Mr. Falk didn't want to answer, and well, then he says "Well, I suppose as long as you fellows come here and ask me it will be all right for me to give you my personal opinion."

Well, then, he mentioned, I believe he mentioned two names, Mr. Burke was one, and I don't recollect the other one, and after some discussion it was decided that Mr. Burke would be all right to go to see on the formation as to how to start this union, this independent union.

Q. Well, after that was decided, who decided to see Mr. Burke?

A. I couldn't say that no more, whether it was among the three of us or whether it was discussed between the four of us.

Q. When you say "between the four of you", you mean the three of you, and the fourth—

A. And Mr. Falk, yes.

Q. Well, after that discussion was had between the three of you or between the four of you, then what was done?

A. Mr. Falk was requested to get in touch with Mr. Burke.

Q. Who made the request, if you recall?

A. I don't remember, it was one of the three of us, either Mr. Leslie Greget or Mr. Adamski or myself, one of the three of us asked him.

Q. What did Mr. Falk do?

1989 A. Well, Mr. Connell was in the office—he came in later, and he says "I will get him for you." So Mr. Connell took the phone—excuse me—and he got Mr. Burke on the wire.

Q. Let me ask you this: Do you know the phone arrangement in the Falk Corporation?

A. What do you mean by that?
Q. Well, in order to get a person you have got to go rough the switch that is there, the switchboard out in the fice.
A. Yes, sir.
Q. Then did Mr. Connell ask the girl to get Mr. Burke n the phone?
A. No, he just asked for an outside line.
Q. Did he give the number of the phone, do you recall?
A. I wouldn't say, I couldn't recall.
Q. But at any rate Mr. Connell got Mr. Burke on the hone.
A. Yes, sir.
Q. Then what happened?
A. After Mr. Burke was on the phone then Mr. Harold alk took the receiver and he done the talking.
Q. What did Mr. Falk say?
A. He said who he was, and it seemed to me as though he party on the other end couldn't remember who Mr. Harold Falk was, because he had to repeat his name about hree or four times before it must have came to him who this Mr. Falk was, and then he said "Well, I have a com-990 mittee here of three that want to see you on giving them advice as to how to form an independent union."
And he says "Well, they want to know when it would be est to see you or whether you could come down and see hem."
And then after some talk back and forth, it was decided we o down there Wednesday morning at 10 o'clock, to see Mr. Burke at his office.
Q. Was that decided while Mr. Falk still had the phone n his hand?
A. Yes; at one time he held his hand over the mouthpiece nd then he talked with us, whether 10 o'clock in the morning ould be O. K. with us, and we told him it would.
Q. When you left there, was there any discussion as you alked out?
A. There may have been some words said, I don't re-nember.
Q. Then after that conference, at Mr. Falk's office, what id you three men do?
A. We went back below the hospital and give our report o the rest of the men that were waiting for us.
Q. Who made the report to the rest of the men?

A. I don't remember.
Q. One of the three did the talking?
A. One of the three of us, yes, sir.
Q. After that report was given, were the men told that an appointment had been made with Mr. Burke?
1991 A. Yes, sir.
Q. For 10 o'clock the next morning?
A. Yes, sir.
Q. Then did the men select additional men besides the three of you to go down?
A. There were men selected, more selected than the three of us, yes, but I don't remember how many were selected at that meeting, but when we were down at the lawyer's office, there were ten of us.
Q. And among those ten were the three of you who were this committee who called on Mr. Falk?
A. Yes, sir.
Q. And seven others.
A. Yes, sir.
Q. What was done at the meeting—the second meeting of the 13th—besides arrange for a group to go down and see Mr. Burke at 10 o'clock on Wednesday?
A. Well, after we knew that we had to go down to see Mr. Burke, naturally when you go to see a lawyer you have to have money, so we started a collection and we collected $17 to take along down to Mr. Burke.
Trial Examiner Batten: You say "naturally"—don't put this in the record.
(Discussion outside the record.)
Q. (By Mr. Engelhard.) Now, John, how much
1992 money was collected?
A. $17.
Q. Was that because there were 17 men there?
A. No, I believe there was one man there that did not contribute; I don't know why; some of the men didn't have any money with them and somebody else paid a dollar out for them, but I believe there was one man that did not contribute at all.
Q. You don't know who he was?
A. No, sir.
Q. Was Mr. Landry there?
A. Yes, sir.
Q. Did he contribute his dollar?
A. I think he did, because he even went down to the lawyer with us.

Q. Now, that is in substance what occurred at that second meeting?

A. Yes, sir.

Q. That you testified to?

A. Yes, sir, shortly after that we adjourned.

Q. And the next morning the ten of you went down to Mr. Burke's office?

A. Yes, sir.

Q. Tell us in substance what occurred at Mr. Burke's office.

A. Well, when we got down to Mr. Burke's office we
1993 told him who we were, what we—where we came from, and that the arrangement that Mr. Falk had made for us over the phone and he says "All right, be seated."

Then he took our names, we each signed our name on a slip of paper, and I believe Mr. Clark read off parts of the Severson Act, and give us a little explanation, and then he asked us what we wanted to form, an association or a union, or whatever we wanted to call it.

It was decided we would form an association to the best of my knowledge; I don't think there was any mention about a corporation at that time, and that to the best of my knowledge it was to be an association by the name of Independent Union of Falk Corporation Employees.

There was nothing mentioned about incorporating to my knowledge, unless it slipped my mind.

Q. If there was, you don't remember it?

A. It has slipped my mind.

Q. Go ahead, and give us the best of your knowledge, that is all we are asking you for.

A. Well, while Mr. Clark read some of those articles, somebody said "Excuse me for a minute, we want to know what this advice will cost us, because after all we are here and we have to pay for it if there is any charge to it".

Q. (By Trial Examiner Batten.) Just a minute, you are relating a conversation in the lawyer's office.

1994 A. Yes, sir.

Q. What happened.

A. Yes, sir.

Q. How did you happen to think to say that nothing was said about a corporation? If nothing was said, why did you relate it in your conversation?

A. I have heard the testimony of the man ahead of me on the stand.

Trial Examiner Batten: I see.

Q. (By Mr. Engelhard.) You say so far as you know nothing was said about a corporation?

A. Not to my knowledge, not at the lawyer's office.

Q. You don't agree with all the testimony of all the other fellows?

A. I can't remember that then, no, sir.

Q. All right, go ahead.

Mr. Lamfrom: You were where you asked him how much it was going to cost.

The Witness: Oh, yes.

Then Mr. Burke says "Well, we will make it this way: If you boys are successful in starting this Independent Union I will send you a bill after everything is settled; if the bill is too big for you, cut it down to suit yourselves and present it to me and if I think it is fair, I will accept it."

"If you are not successful in organizing this inde-
1995 pendent union, my advice this day is free."

That was about all that I can remember just now. There were a lot of other things said and done, but I can't remember them all.

Q. (By Mr. Engelhard.) Well, at the time that the men were there, was there any decision made by the men as to what Mr. Burke should continue to do?

A. I think he was to go ahead to draw up the articles for an association.

Q. Was that your understanding when you left?

A. Yes, sir.

Q. And did you go back to Mr. Burke's office.

A. No, sir.

Q. You were not among the three that went back the following day?

A. No, sir.

Q. Do you know who did go back?

A. No, sir, it was news to me when I heard somebody was back in Mr. Burke's office and they had signed some papers for incorporating, that was news to me altogether.

Q. I am asking you about the day after this first meeting you were in Mr. Burke's office on the 14th.

A. Yes, sir.

Q. That was Wednesday the 14th.

A. Yes.

1996 Q. Well, after you left Mr. Burke's office, you left with the impression that Mr. Burke was to draw some papers?

A. Yes, sir.

Q. Mr. Mitschka, after you left Mr. Burke's office, there was a meeting that afternoon in the basement of the hospital.

A. Yes, sir.

Q. What was done at that meeting?

A. Well, we made the report of what we had said down at the lawyer's office, and then it was decided that we would have a general meeting the following Sunday.

Well, I told the boys right away I was sorry I could not attend that meeting, because I had made a date about two weeks previous to that to go up north about 120 miles from here, and I was not at that meeting, but it was decided to have a further meeting at the North Avenue Auditorium.

Q. Do you know what decision was made at that meeting about getting up applications?

A. At which meeting?

Q. Of the 14th, was there a decision made as respects applications? Or, was that matter taken up at some other place?

A. No, some of it was taken care of right at that meeting. I do not recall who was to go out and have the applications printed, but whoever the party was said right away "That is an awful short notice but he will do his best", and I 1997 believe those applications were out Friday afternoon or Saturday morning.

Q. Were you still in town on Friday and Saturday?

A. Yes, sir.

Q. When did you leave to go north?

A. Saturday after dinner.

Q. You worked on Saturday morning?

A. Yes.

Q. The whole plant worked Saturday morning?

A. I believe they did.

Q. Then you did not attend the meeting of the 18th at the Auditorium?

A. No, sir.

Q. The North Avenue Auditorium.

A. No, sir.

Q. When you came back—by the way, are you a member of the Independent Union?

A. Yes, sir.

Q. Are you an officer?

A. Yes, sir, director.

Q. You are a director?

A. Yes.
Q. You don't hold any other office?
A. No, sir.
Q. Some of the directors of course are also the
1998 president, vice president and secretary-treasurer, and so forth?
A. Yes.
Q. (By Trial Examiner Batten.) Let me ask you a question: Can any member of this Independent Union be an officer unless they are a director?
A. No, sir, you have to be a director to be elected an officer of the organization.
Mr. Engelhard: Mr. Trial Examiner, of course, that is the law of this state, that a corporation, the officers are elected by the directors; the stockholders are not allowed to elect the officers.
Mr. Lamford: But a stockholder may be an officer without being a director, except president. The president must be a director. That is the statutory law of the state.
Q. (By Mr. Engelhard.) Now, when did you join the Independent Union?
A. I couldn't say the date; my application card would show the date on it.
Q. Was it before you went up north or after you came back from the trip?
A. I don't remember.
Q. At any rate you joined—let me ask you this question: Did you join before it was a corporation, I mean you signed the application blank before there was a corporation?
A. I don't remember.
1999 Q. Did you come back in time to go to work on the following Monday?
A. Yes, sir.
Q. The 19th?
A. Yes, sir, I come back Sunday evening.
Q. Now, when did you find out that Mr. Wilson, Mr. Trost and Mr. Carl Menz had signed the articles of incorporation?
A. Some time during the following week, I could not say what date.
Q. Did you attend the meeting—was it the 24th?
A. Yes, sir.
Q. At that meeting the corporation was organized?
A. Yes, sir.
Q. You adopted by-laws at that meeting?

A. I couldn't remember that now.
Q. Well, the directors were elected?
A. The directors were elected, yes, sir.
Q. And the board of directors elected the officers?
A. After the regular meeting, yes.
Q. And the Independent Union has had meetings every month.
A. Yes, sir.
Q. Several regular monthly meetings.
A. Yes, sir.
Q. That is, the members of the union.
A. Yes, sir.
Q. The board of directors have their special meetings at times.
A. The board of directors has their special meeting, after every monthly meeting, right following the meeting, and they can also have special meetings at the request of some of the directors; I don't remember how many it takes to call a board of directors meeting.
Q. Well, you don't carry around in your mind the by-laws?
A. No, sir.
Q. Have you ever read the articles of incorporation?
A. No, sir.
Q. Now, during the time that these meetings were held in the basement—
A. Pardon me, during what, the time of what?
Q. During the time that these meetings were held.
A. What meeting?
Q. In the basement of the hospital.
A. Yes.
Q. And at which you attended;—you were paid?
A. Yes, sir.
Q. You were paid for the time that you attended?
A. Yes, sir.
Q. And later on that was deducted out of your check?
A. It was.
Q. So far as you know that was done to every man who attended these meetings?
A. Yes, sir.
Q. John, who was the guiding light, if there was such, if I could use that expression, in promoting the organization of the Independent Union?
A. Well, I think that credit would have to be given to John Brever because he called—that first meeting Monday afternoon.

Q. During the time that you attended these meetings and the other meetings when you were conferring with these men, were you ever influenced in your activities in connection with the organization of the Independent Union by anything that Mr. Falk said?

A. No, sir.

Mr. Rissman: I object to the question, it calls for an opinion of this witness whether there was influence or not. We have the facts and the Board and the Examiner can decide whether there was influence.

Trial Examiner Batten: Well, I think the Examiner can judge from the facts; however, I see no objection if he has an opinion, I don't know how much weight—

Mr. Engelhard: I did not ask for an opinion.

Mr. Rissman: The question calls for an opinion.

Trial Examiner Batten. Let's have the question read, please.

(The question and answer were read.)

2002 Trial Examiner Batten: I see no objection to the answer, for whatever it may be worth. The facts are here, the conversation.

Q. (By Mr. Engelhard.) Now, John, in joining the Independent Union was that your free choice or were you influenced by any person?

A. It was my own free choice.

Q. Why did you join the Independent Union and not the C. I. O.?

A. Well, why I should join—why should I join the C. I. O.? The C. I. O. and the American Federation of Labor was sort of bucking one another, and I didn't know which one to join if I wanted to join an outside organization, and I felt if we could start something in the plant, knowing all this, well, that we would get better results than if we have some union from the outside come in and tell us what to do.

Q. (By Trial Examiner Batten.) Were you ever solicited to join a union before you joined the Independent Union?

A. Some years ago.

Q. How many years are you a pattern maker?

A. 26.

Q. How many times during that 26 years have you been solicited to join a labor organization?

A. About twice.

Q. Did you ever join one up to this time?

A. Yes, I belonged to a labor organization when I
2003 first came to Milwaukee; that was my first step; I went to the business agent at that time and I told him I was from Cook County, and I joined the union and got a job at Milwaukee.

Q. What kind of organization was that?

A. Pattern maker's union.

Q. (By Mr. Engelhard.) Was that an A. F. of L. union?

A. Yes, sir.

Q. Did you join?

A. Yes, sir.

Q. How long were you a member of that?

A. I believe only a few months. When I first joined that organization I was sent to Allis Chalmers to look for a job and the business agent at that time told me "If the boss asks you if you belong to this organization, you don't have to tell him."

I didn't like that idea, because if I want to belong to any organization I ain't afraid to tell anybody; so I guess that was the first start I had against outside organizations.

Q. (By Trial Examiner Batten.) Did you go to work out at Allis-Chalmers?

A. No, I didn't go to work at Allis-Chalmers; I landed a job at Nordberg, I worked eleven months and three weeks.

Mr. Lamfrom: Was it clear to the Examiner whether the witness had testified that the C. I. O. had solicited him?

Mr. Engelhard: Well, I will ask a question.

2004 Q. (By Mr. Engelhard.) John, did the C. I. O. solicit you at any time?

A. No, sir.

Q. Before or after you joined the Independent?

A. No, sir.

Q. (By Trial Examiner Batten.) Did the A. F. of L. solicit you out here at the Falk plant?

A. At the Falk plant?

Q. At the Falk plant, I mean in the last year.

A. No, sir..

Q. Then as a matter of fact you didn't have much of a choice, did you?

A. Well, I couldn't—

Q. I mean nobody actually asked you to join?

A. No, nobody asked me to join?

Q. (By Mr. Engelhard.) During the month of April you had a choice of joining the C. I. O.

A. Yes, I suppose so.

Q. You knew the C. I. O. was active in the plant.

A. Yes, sir.

Q. You knew that some of the men had joined the C. I. O., didn't you?

A. I have heard of it, yes.

Q. I mean it was rumored around theplant.

A. Yes, sir; that they were very active at the plant, I
2005 suppose Shop 3.

Q. Mr. Mitsche, it was testified to by Mr. Neal that at the meeting at which Mr. Falk was present "He had promised to bring us information as to how to start this Independent Union."

Did you hear Mr. Falk make any such statement at that meeting, that he was going to bring information as to how to start a union?

A. No, sir.

Q. What information did he promise to bring?

A. He only promised to bring us information regarding the Severson Act, whether an independent union would be within the law.

Q. To your knowledge was anything said by him, that he was going to tell you fellows how to start a union?

A. No, sir.

Trial Examiner Batten: Did Mr. Neal testify that Mr. Falk told him how to start the union?

Mr. Engelhard: He say "He had promised to bring us information as to how to start this independent union". That is his testimony.

The Witness: Mr. Engelhard keeps moving.

Trial Examiner Batten: Mr. Engelhard, the witness says you are moving over, and he can't see you. Won't you either get closer—

2006 Mr. Engelhard: Yes, I think if Mr. Rissman and I slept in the same bed we would be very comfortable.

The witness: It would have to be a big bed.

Trial Examiner Batten: I don't know, I made a statement like that once, and I was mistaken.

Q. (By Mr. Engelhard.) Did you at the meeting at which Mr. Falk was present hear him make any remark—

A. Which Mr. Falk?

Q. Mr. Harold Falk. The testimony of Mr. Neal is as follows:

"Well, he said we would have to incorporate, and that we would have to do it as quick as possible because the C. I. O. were working in the plant."

Did you hear Mr. Harold Falk make any such statement at the meeting of the 12th?

A. I don't remember hearing such a statement.

Q. Would you have heard such a statement if it had been made?

A. I could have heard it.

Q. I asked you if you would have heard it if it had been made.

A. Well, if he didn't say it loud enough I couldn't have heard it because I was away to the other end of the table; there were two tables pushed together, each one about 16 feet long, and we were sitting along that—we were sit-
2007 ting around that long table.

Trial Examiner Batten: Mr. Engelhard, I was just wondering if you have any objection to adjourning now and starting at 1:30, rather than to continue until 12:30 and reconvene at 2 o'clock.

Mr. Engelhard: No, I don't have any objection.

Trial Examiner Batten: Then we will adjourn now.

Mr. Engelhard: I will say this, I am almost finished and if Mr. Rissman could finish his cross examination by half past 12 then Mr. Hitschka would not lose the afternoon.

Mr. Rissman: I could finish the cross examination in two minutes after the direct is through.

Trial Examiner Batten: This does not have to be in the record.

(Discussion outside the record.)

Mr. Engelhard: I think I will be through in just a minute.

Mr. Rissman: Yes.

Mr. Engelhard: As a matter of fact, I think I will rest with him right now.

Mr. Rissman: No cross examination.

(Witness excused.)

Trial Examiner Batten: Then we can adjourn until 1:30.

(Thereupon, at 12 o'clock Noon, an adjournment was taken until 1:30 o'clock P. M. of the same day.)

After Recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock P. M.)

Trial Examiner Batten: Are we ready to proceed?

Mr. Engelhard: I will call Mr. Connell.

EDWARD P. CONNELL, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) What is your full name?

A. Edward P. Connell.

Q. Are you an officer of the Falk Corporation?

A. Yes, vice president.

Q. How long have you been such officer?

A. Well, six years.

Q. How long have you been connected with the Falk Corporation?

A. 24 years.

Q. How did you start?

A. As an order clerk.

Q. And you advanced as the years went by?

A. That is right.

Q. What was your first office?

A. Will you repeat that?

Q. What was your first office that you held with the company?

A. Purchasing agent.

Q. And after you had advanced to purchasing agent, how long were you such purchasing agent?

A. Until 1934, when I took over the accounting as comptroller.

Q. Then you were comptroller?

A. Yes, sir.

Q. Then the next step was the vice presidency?

A. Yes, that is right.

Q. Now, Mr. Connell, did you attend any meeting of the employees of the Falk Corporation held in the basement of the hospital?

A. Yes, I did, one noon I was called over there.

Q. Do you know the date of that meeting?

A. It is not definitely clear in my mind; it was in April.

Q. Do you know whether it was the 12th or 13th?

A. About that time I would say.

Q. Do you know whether it was on Monday, the 12th, or on Tuesday the 13th?

A. This may not be accurate, but I think it was Tuesday, for the reason that Mr. Harold Falk was not there, and usually he is away on Tuesdays, so I think that would be the correct answer.

Q. How did you happen to go to that meeting?

2010 A. Well, I was told by Dick Falk that there was a considerable assemblage over there in the basement of the hospital waiting for some advice as to how to proceed about—it was rumored that they were planning to form an independent union, and he asked me to come over and talk to them.

Q. Did you in response to Richard Falk's invitation or rather his notice that the boys wanted to see you, go there?

A. Yes, I did.

Q. What did you say after you got there?

A. I told them that as nearly as I could interpret the provisions of the Wagner Act, that we had absolutely nothing that we could do for them; that we were not permitted to contribute any way financially, or even in an advisory capacity, and after a short time the meeting was dispersed.

Q. Do you remember any particular questions that any of the men there asked you?

A. Well, it was over in a very brief time, and I have stated in substance what transpired.

Q. Now, then, were you present on the 23rd of April when three organizers of the Independent Union came in and conferred with Mr. Harold Falk and yourself?

A. I was.

Q. Can you tell us what transpired at that meeting in substance?

A. As I recall, Mr. Wilson, Mr. Trost and Mr. Menz
2011 came into the office, and they came in as representatives of the Independent Union with the claim that they had for membership more than a majority of the employees of the plant, and they wanted the right to act as sole bargaining agent.

Q. You say they mad that claim.

A. They made that claim.

Q. Who responded to their statement that they had a majority of the employees—

A. I didn't understand you.

Q. I say, who responded to them, who spoke to them?

A. Mr. Herman Falk.

Q. What was said?

A. He says, "Well, if you have a majority of members we will have to recognize you as sole bargaining agent according to the interpretation of the Wagner Act".

Q. Do you know whether he gave the men anything in writing at that time?

A. Yes, he did, he gave them a letter recognizing them.

Q. Who wrote up the writing that he gave the men, if you know?

A. What is that?

Q. Who wrote up the writing that Mr. Falk gave the men?

A. I don't understand your question exactly.

Q. Well, who dictated the statement that was given to the men?

2012 A. It was dictated after consultation with, I think, Mr. Lamfrom, if I am not mistaken.

Trial Examiner Batten: Exhibit 21 I think, Mr. Engelhard.

Mr. Engelhard: Yes, Exhibit 21.

The Witness: I dictated it and then read it over to Mr. Lamfrom to see if we were doing anything we shouldn't do. That is my dictation.

Q. (By Mr. Engelhard.) You dictated it?

A. Yes, sir.

Q. It is signed by Mr. Herman Falk?

A. Yes, sir.

Q. And the original of this was given to the men.

A. That is right.

Q. Now, were you present at the meeting held on—held at Mr. Harold Falk's office, at which the committee of three men appeared?

A. You mean Mr. Mitschka—

Q. Mitschka, Adamski and Les Greget.

A. Les Greget, yes, I was there.

Q. Did you overhear a conversation which took place between them and Mr. Falk?

A. Yes.

Q. Did you join in the conversation?

A. In a small way, yes.

2013 Q. Will you tell us the substance of what occurred at that conference.

A. They stated they wanted to form an independent union and they wanted advice as to whom to select as an attorney to steer them correctly, and Mr. Falk mentioned the names of Mr. Burke and another attorney, Mr. Fish, and they wanted—they asked if he could arrange for an appointment, and he says "Well, I don't suppose there is anything wrong about that."

So he says, "Yes, we will phone to Mr. Burke and make an appointment," and as I recall it I was standing to his right nearest the telephone and I took the receiver off the hook and asked for Mr. Burke and when he was on the line I turned the receiver over to Mr. Falk.

Q. Did you hear the conversation that Mr. Falk conducted with Mr. Burke?

A. I heard his end of it.

Q. Well, will you tell us the substance of his—what the substance of his end was?

A. It was arranging for an appointment, as I recall the appointment was made for the next day at ten o'clock.

Q. Was there any further conversation held there that you remember?

A. No, that practically closed the meeting as I recall it.

Mr. Engelhard: That is all.

2014 *Cross-Examination.*

Q. (By Mr. Rissman.) Mr. Connell, directing your attention to the meeting of April 23rd, when Mr. Wilson, Mr. Trost and Mr. Menz were in the office, did they indicate how many members they had in their Independent Union?

A. They said a majority.

Q. They didn't indicate any number?

A. No, they did not.

Q. Did they submit any proof of the majority?

A. No, and I made statement to them that their statement that they have a majority will no doubt be challenged and they had better be sure they were right.

Q. Challenged by whom?

A. Well, I assumed later it would be challenged by the C. I. O. or some other agency.

Q. Did you or Mr. Herman Falk request any proof?

A. We had an affidavit from them to the effect that they

did represent a majority, and having long association with the gentlemen we were very much inclined to believe them.

Q. Do you still have that affidavit?

A. It is on record, yes, sir.

Q. Could it be brought in?

A. Wait a minute.

Q. Pardon?

A. Was an affidavit submitted? Yes, it must be in 2015 the records.

Q. (By Mr. Engelhard.) Let me ask a question: Was that affidavit submitted at the time, Mr. Connell, or was the affidavit submitted—

A. Later; it wasn't submitted on that date.

Q. (By Mr. Rissman.) Directing your attention to this one date—

A. Yes, sir?

Q. —was there any proof submitted?

A. No.

Q. Was there any request for proof on the part of the company?

A. No, there was none except we took their word, and as I told you before, we said they had better be sure they were right because no doubt they would be challenged.

Q. Did you or Mr. Herman Falk suggest that the employees should have a vote or election to determine whether or not they chose this Independent Union?

A. No, we did not.

Mr. Rissman: That is all.

Redirect Examination.

Q. (By Mr. Lamfrom.) What led you to believe, Mr. Connell, the statement that these men made to you on that date, that they had a majority?

A. During that period there was a tremendous 2016 amount of activity, agitation for unions of one type or another, and very frequently my work takes me into the shop, as it does Mr. Herman Falk and Mr. Harold Falk, and we contacted a considerable number of people; I mean you get the sentiment from the number of people who talked favorably for the Independent Union.

Q. At the time you dictated this letter recognizing the Independent Union as sole bargaining agent was it your

est belief that that representation of a majority, if they claimed it, was the fact?

A. Yes.

Q. And both you and Mr. Falk agreed on that.

A. Yes.

Q. Had you any reason to believe that there was any misrepresentation on the part of this committee as to the fact that they represented a majority?

A. None whatever.

Q. Or did you have any idea that in representing—in stating that they represented a majority, that they were mistaken?

A. No, I had no such idea.

Q. What was your feeling as to your obligation under the law as it existed at that time, as to whether or not you must recognize the majority if it is a majority?

A. We had—we understood we had no choice but
2017 to accept them as the sole bargaining rights if they represented a majority.

Q. Was it your position at that time that you would recognize, as the bargaining agent for the employees of The Falk Corporation, any labor organization as defined in the Wagner Law that had a majority of its employees in its membership, as the bargaining agent for the employees?

A. We would have no choice but that.

Mr. Engelhard: May I ask one question?

Q. (By Mr. Engelhard.) Mr. Connell, in the years you acted as purchasing agent or in other capacities, did you get to know Mr. Wilson?

A. Yes.

Q. Personally?

A. Yes, I did

Q. For how many years had you known Mr. Wilson?

A. I can't state except—yes, I can state 15 years.

Q. How many years had you known Mr. Trost?

A. For I think a longer period than that.

Q. How many years had you known Mr. Menz?

A. Mr. Menz is a relatively new employee.

Q. Did you have any—

A. I mean relatively when you figure 15 or 20 years, he is relatively new.

Q. Did you have any reason to disbelieve either one
2018 of those men when they made the representation?

A. No.

Q. You had always found these men to be truthful?

A. Yes indeed.

Mr. Engelhard: That is all.

Mr. Rissman: That is all.

Q. (By Trial Examiner Batten.) Mr. Connell, how many employees did you have on April 23, do you know, or have you any idea?

A. I can very closely—

Mr. Lamfrom: May I say to you, Mr. Examiner, we intend to show that from the party that has the figures. Well, if he has any knowledge—

Q. (By Trial Examiner Batten.) Well, at this conference, did any of the committee make any statements with regard to the number of members they had?

A. Why, mention was made—I am certain, it wasn't at this meeting—

Q. Well, before the meeting, did any of these men ever mention the number of members they had?

A. I think at one time I heard Dick Falk say they had about seven or eight hundred, and they were getting members daily.

Q. I presume daily during this time when you were going out around the shop it was very noticeable that there
2019 was quite a tension, and so forth, in the plant during the period, was there not?

A. I think the efficiency of the plant dropped at least 20 per cent.

Q. I presume that both organizations were putting on a sort of membership drive, weren't they, so that during that period I presume most of your employees were more interested in the organization of one or another of these unions than most anything else, weren't they?

A. Yes, I am sorry to say that was true.

Trial Examiner Batten: That is all.

Mr. Engelhard: That is all, Mr. Connell.

Mr. Clark: I have no questions.

Trial Examiner Batten: Pardon me, Mr. Clark. I thought this morning in accordance with our discussion that you were going to proceed when they had finished.

Mr. Clark: Yes.

Trial Examiner Batten: That is all, then, Mr. Connell.

(Witness excused.)

Mr. Engelhard: Mr. Green, will you take the stand, please.

HARRY GREEN was recalled as a witness by and on behalf of the Respondent, and being previously duly sworn, was examined and further testified as follows:

2020 *Direct Examination.*

Q. (By Mr. Engelhard) Mr. Green, there was testimony offered here to the effect that you removed Mr. Rasey—

A. Mr. Rasey?

Q. Mr. Rasey, from the job that he had and put him with Mr. Trost.

A. Yes.

Q. Do you recall that occasion?

A. Yes.

Q. Will you tell us why you removed Mr. Rasey from the job he had and put him with Mr. Trost?

A. Because he was going around with organization cards for the C. I. O. and I met him and I told him that he should not do it, so I demoted him, I took him off the job he was on and put him on the floor with Mr. Trost.

Q. Did you have any particular reason for putting him in company with Mr. Trost?

A. No, no reason whatever for putting him with Mr. Trost, except that was a place where I could put him.

Q. What type of work was he doing when he worked with Mr. Trost?

A. It was a kind of assembly work.

Q. Do you remember having a conversation with Mr. Landry about a raise, with regard to a man by the name of Sharparki?

2021 A. What name?

Q. Sharparki.

A. I don't remember that name at all.

Q. Is that the man they called "Sausage"? Walshulski, do you know a man by that name, Leo?

A. What machine does he run? Oh, Leo you mean?

Q. Do you remember having a conversation with Mr. Landry about that man about a raise, a request?

A. About a year ago I think that was.

Q. Have you refreshed your memory on that?

A. Yes. Mr. Landry did speak to me; that was about a year ago, as I remember, if I remember rightly.

Q. Do you remember what Mr. Landry said, and what you said on that occasion?

A. As I remember it now Mr. Landry said that man was worth more money and I differed with him, because that man had been caught sleeping when he was working on the second shift, and he was put to work, as he stated to me, and that was why I refused the raise.

The night foreman had complained about him sleeping, he had to wake him up two or three times, and that was why I refused him.

Q. When you were talking to Mr. Landry about it, did you or he use a little profanity?

A. Oh, yes, we always do.

2022 Q. In other words, in discussing matters profanity creeps in, whether it is in good fellowship or not—

A. Absolutely.

Q. (By Trial Examiner Batten) That does not mean anything as to whether you are friends or enemies.

A. No.

Q. (By Mr. Engelhard) You call each other names with a smile on your face?

A. Certainly.

Q. Would you say Mr. Landry was correct when he says that after you and he talked about it, you said "Well, I don't give a damn what you call it", and you walked away?

A. Possibly I did say that.

Q. The net result of the argument was that Mr. Landry still believed what he thought was right and you believed what you thought was right?

A. Certainly.

Q. You have had numerous arguments with Mr. Landry, haven't you?

A. Yes, sir.

Q. Not only this year, but in prior years.

A. Four years.

Q. Have there ever been any hard feelings between you?

A. No.

Q. And there isn't any hard feeling now?

2023 A. No.

Q. As a matter of fact you rather like an argument, don't you, Mr. Green?

A. With him, yes.

Q. He has a good come-back, hasn't he?

A. Sometimes.

Q. (By Trial Examiner Batten) I don't suppose you and he ever talk during working hours, do you?

A. Oh, yes.

Q. (By Mr. Engelhard) Well, I assume, Mr. Green, that n your work as superintendent there are times when you and he men talk but there is a limit to it.

A. Well, there is really no limit to it except I get mad nd leave them.

Q. That is the limit.

Mr. Rissman: That is the advantage of being a superin-endent.

Q. (By Mr. Engelhard) What I mean is, it is not a daily ccurrence?

A. Oh, yes, there is always some man that has a grievance f some kind, or something like that, and I have to try and atisfy that man to the best of my ability, to get rid of his rievance, whatever it is.

Q. At present you have how many men in the three units over which you are superintendent?

024 A. There are somewhere around 630 and 640, somewhere right around that, day and night.

Q. Day and night. Are you also superintendent over those nen at night?

A. Well, a man by the name of Seal is superintendent, but e is under my jurisdiction.

Q. You are responsible for the production in those three lepartments.

A. Yes.

Q. You mentioned yesterday I believe, Shop No. 1, Shop No. 2 and Shop No. 3.

A. Yes. sir.

Q. But at night you are not necessarily there.

A. Not all the time. Sometimes I go down and check up nd see that things are all right, or get there early in the norning.

Q. You get reports of what is going on in those three nits?

A. Yes. sir.

Q. From time to time.

A. Yes. sir.

Q. And in the course of your duties as superintendent you ave got to check up the individual men or you check up the oremen to see that the men are checked up.

A. Yes.

025 Mr. Engelhard: Mr. Examiner, this may be a part of the record.

It is our intention to check over some of these transcripts that we have not had a chance to check over, and if there is any further testimony that I want from Mr. Green I will call him again, that is, he may be called tomorrow. It is just a question of what we find tonight by going over the transcripts, but it is impossible to check over almost a fifteen hundred page transcript to see whether there is anything else or not.

Trial Examiner Batten: Well, I assume, Mr. Engelhard, that up to the time that the record is closed there is no objection on anybody's part to your calling anybody you feel is necessary.

Mr. Engelhard: Well, I feel I would be wasting a lot of time if I now—

Trial Examiner Batten: I say, as far as the Examiner is concerned, up to the time the record is closed at the close of the hearing, why, you may feel free to do what you consider necessary for the proper interests of your client.

Mr. Engelhard: The reason I make this statement is, I think at the time Mr. Green was put on adversely, Mr. Hydar and some others, we reserved the right to cross-examine.

Trial Examiner Batten: That is right.

Mr. Engelhard: And put them back on the stand.

2026 Now, we do not want to give the Examiner and counsel the impression that we necessarily expect to put any of these men back unless we find it necessary, in checking up some of the details, because I think Mr. Rissman took all of these men pretty nearly over everything when he examined them.

Trial Examiner Batten: Well, we will understand it that way, in case you so desire.

Mr. Engelhard: That we would unnecessarily prolong this hearing if we went over the same story again.

Trial Examiner Batten: Yes.

Mr. Engelhard: That will be all for the present, Mr. Green. We will not call you any more this afternoon, so if you want to go back to the plant and take care of your duties you may do so.

Mr. Rissman: No questions.

Trial Examiner Batten: Did you punch a card when you left, Mr. Green, or you don't have to punch it?

(Witness excused.)

Mr. Engelhard: Mr. Richard Falk.

May we have a few minutes, Mr. Examiner?

Trial Examiner Batten: Yes, how long?
Mr. Engelhard: Just a few minutes.
Trial Examiner Batten: Five or ten minutes?
Mr. Engelhard: Oh, I would say about five minutes.
Trial Examiner Batten: Well, we will recess for ten
2027 minutes.
Mr. Engelhard: All right.
(A short recess was taken.)
Trial Examiner Batten: I believe we are ready to proceed.
Mr. Engelhard: Strike out Mr. Richard Falk as being the next witness, and I will call Mr. Buuck.

HELMUTH OSCAR FREDERIC BUUCK, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) What is your full name?
A. Helmuth Oscar—shall I use the other one—Frederic Buuck.
Q. I assume you are German, Mr. Buuck.
A. What is that?
Q. I assume you are of German extraction.
A. Yes, sir; a major in the army asked me that question. I am not ashamed of it.
Q. Are you an ex-soldier?
A. Yes, sir.
Q. I mean you were in the army.
A. Yes. sir.
Q. How old a man are you?
A. 42 years.
2028 Q. Are you a superintendent at the Falk Corporation?
A. I am night superintendent at the Falk Corporation, yes, sir.
Q. In what department?
A. In the foundry.
Q. How long have you been employed? Are you a little hard of hearing?
A. In one ear, yes.
Q. Can you hear me all right?

A. Surely.

Mr. Engelhard: Will the reporter read the last question please.

(The question was read as follows:

"Q. How long have you been employed?")

Q. (By Mr. Engelhard) By the Falk Corporation.

A. Off and on for 26 years.

Q. How old were you when you started?

A. Just a kid.

Q. You learned the trade at the Falk Corporation?

A. No, I was just a roustabout, did clerking, did helping; well, I just monkeyed at the places I thought I could be of use.

Q. I presume you became foreman at some time.

A. Yes, sir.

Q. And now you are superintendent.

A. Yes, sir.

2029 Q. How many years have you been superintendent?

A. I have been superintendent, or night superintendent since I have been 19 years of age.

Q. Since you were 19 years of age?

A. Yes, sir.

Q. Except for the time you were in the army?

A. Yes, sir.

Q. How long were you in the army?

A. Oh, I don't know, a very short period. They didn't want me, I was under deferred classification, and I quit because there were so many people asking me about getting jobs, they were trying to avoid getting into the army, and I quit my job and joined the army all of my friends were doing it, so did I.

Q. Now, Mr. Buuck, Mr. Neal testified that on the 23rd of April he had a conversation with you. Do you recall having a conversation with Mr. Neal about that time?

A. I have had lots of conversations with Mr. Neal, yes, sir.

Q. I mean, do you recall having a conversation with him at about that time, the 23rd of April? I mean Mr. William Neal.

A. William Neal, Bill Neal, yes.

Q. Yes, Bill Neal.

A. Yes, Bill Neal.

2030 Q. He is in your department?

A. Yes, sir.

Q. He is a night man?

A. Yes, sir.

Q. He is a truck driver, isn't he?

A. Well, he is a handy man; he is a man I use for chaining, I use him for truck driving; he is used wherever it becomes necessary to use a man of his type.

Q. Do you remember a conversation he had with you regarding whether or not any work would be done on a Saturday, the 24th of—

A. Yes, sir, I did have.

Q. Will you tell us what he said and what you said?

A. He said he was appointed by the boys and he would like to know what we were going to do, the boys would like to know if we were going to work on this Saturday.

That was the sum and substance of the conversation. And at the time if I remembr correctly I was slightly irritated, which I do get at times and the boys know it, and I may have asked him at that time, "Now, who in the hell do you represent?" Just like that.

Q. What did he say to that?

A. Well, he says—he got very snooty, and told me that as far as he was concerned, I would not listen to him at any time anyway, so what's the use, and he shrugged his
2031 shoulders, and that was all that was said at that time.

Q. Now, do you recall a conversation with William Neal in which you were supposed to have said, "I feel sorry for you".

A. Yes, sir.

Q. Will you state just what the occasion was?

A. Well, this William Neal came back after a meeting one evening, he came walking into the shop in what I considered was an obstreperous manner there, he came through and passed me up, passed the foreman up, passed my side-kick, Mr. Cain, up, and he went to various of the men and gave them some paraphernalia, and then he slowly and leisurely walked around and I thought something was wrong with the man, that he was either punch-drunk or something else—I would not swear to that—and so I pulled him over to the side, and I says, "Bill, I think you will live to be sorry for this obstreperous conduct."

I had difficulty, I had prided myself—

Mr. Rissman: I move the last part be stricken as not responsive.

The Witness: Maybe I can clarify my statement.

Trial Examiner Batten: Well, I don't know as it will do any harm there if it stays in.

The Witness: I don't want to do any man any harm.

Trial Examiner Batten: I mean your statement, not the man.

2032 The Witness: I like him.

Q. (By Mr. Engelhard) Did you ever make this statement to Mr. Neal:

"Louis Meindle, Steve Fodi and yourself, I just feel sorry for you."

A. No, sir; I did not make that statement. I made a statement to Mr. Neal—he made this statement to me after he went home that evening—you understand, I prevailed upon him to go, and when he came back that evening, then I took him to the corner and he had a very confidential talk, he and I, which we had previous to this time, we had many talks, and I told him that I thought with his acts and chips on his shoulder, that he would live to be sorry for it, and I sincerely believed that.

Q. What did he say to that?

A. What did he say to that?

Q. Yes.

A. He told me that evening that he would amend his ways, he would be more careful of his acts.

Q. He testified that you at one time asked him to distribute some application blanks—Independent Union application blanks.

Do you recall whether you ever had any conversation with him about union blanks, Independent Union blanks, application blanks?

2033 A. I wish to state at this time I happen to be opposed to the C.I.O., that is my individual opinion, I personally am opposed to the C.I.O.

I also happen to be one of the two republicans that they were looking for after the last election, just to make myself clear, that is all.

Q. Did you talk to him about application blanks?

A. No, sir, I did not.

Q. Mr. Neal testified that on April 16th, this is his testimony:

"April 16th, I believe the day the application blanks came out.

"And what did you say to him when he asked you that?

"A. I told him I would do nothing about the formation of that union, and the application blanks."

Do you remember whether or not you ever talked to him about the Independent Union?

A. Well, I recollect previous to this time I had talked to him, yes. He had always been very emphatic in his demand, rather radical in his views. He used to leave questions hanging in the air, and let me suppose something.

He had been a Works Council man and I had talked to him previous to his entering the C.I.O.

Q. What did you say to him?

2034 A. What?

Q. What did you say to him?

A. Well, things pertaining to the shop or matters that came up, grievances he was supposed to have had, that he may have asked me about.

Q. Isn't your testimony, Mr. Buuck, that you at no time asked him to distribute any application blanks for the Independent Union?

A. I never did, no, sir.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman) In your confidential talks with Mr. William Neal, did you ever express your opposition to the C.I.O.?

A. Well, he expressed his views very freely and I expressed my views freely. That was a little chat we may have had together, often, quite often.

Mr. Rissman: That's all.

Redirect Examination.

Q. (By Mr. Engelhard) That is a common practice, wasn't it?

A. Yes, I argued that point.

Q. Did you argue other matters with Mr. Neal?

A. Yes, sir.

Q. About politics?

2035 A. Yes, sir. He happens—he professes to be of the same political faith that I am, yes, sir.

Q. (By Trial Examiner Batten) Are you in doubt?

A. Yes, very much in doubt.

Q. (By Mr. Lamfrom) In expressing your views on the C.I.O. to Mr. Neal, did you understand that you were reflect-

ing the views of the Falk Corporation or was it your own views that you expressed?

A. I believe Mr. Falk has told me rather flatfooted, called me down in the shop, I remember, and I believe Mr. Falk several times has told me I had better curb my language; in fact I was told by Mr. Falk a lot of times that maybe my views should not be expressed.

Is that what you want to ask me? That is, as I understood the question.

Q. Well, after Mr. Falk told you to curb your expressions, did you still go on expressing any views to your men regarding the C.I.O. and the Independent Union?

A. Yes, I did. I believe that is my right as an individual, as long as it didn't interfere with the men at their work. I never used that as a basis to coerce—is that what they use. I am not familiar with it?

Q. Well, coerce, intimidate and interfere.

A. I expressed the view here the other day that I thought maybe it would be a good idea for us fellows on the out-
2036 side to picket the Labor Board. I don't know, is this fellow the labor—

Q. Mr. Rissman?

A. Yes, sir.

Q. Well, let me ask you, whether or not in expressing your views to the men with regard to the C.I.O. or with regard to anything else, did you or did you not feel that you were expressing the views of the corporation?

A. No, sir, I did not feel that I was expressing the views of The Falk Corporation.

Q. Did you attempt at any time in arguing with your men with reference to the C.I.O. or with reference to any union question, to reflect what you understood to be the attitude of the Falk Corporation?

A. Hell, bring it down to simpler terms, I am a foundry rat.

Q. What is that?

A. I am a foundry rat, if you please; use simpler terms.

Q. Well, did you at any time in talking about the C.I.O. or any labor organizations intend to make your men understand that you were expressing the views of the employer, the Falk Corporation?

A. No, sir, I did not. Those are my own views, and I am not ashamed of them.

Mr. Lamfrom: That is all.

Mr. Rissman: Just a minute.

37 *Recross Examination.*

Q. (By Mr. Rissman) Do you know the views of The Falk orporation on the question of the C. I. O.? Or the Inde-ndent Union?

A. Well, I have been given to understand—I did not attend e meeting, but I was given to understand that we had no ews, as far as we foremen, we had no views; we were just t, we were to keep our mouths shut, that our views were not anted.

Q. Do you know the views of Mr. Harold Falk?

A. His personal views, do I know his personal views?

Q. Yes, on this subject.

A. I would not know his personal views on it, no.

Q. Did you ever hear of his personal views?

A. No, sir, I can frankly state that; I would think that would have some though.

Q. What do you think they would be?

Mr. Lamfrom: That is objected to. It seems to me that going rather far afield, what he thinks Mr. Falk's views e.

Trial Examiner Batten: Well, I will sustain the objection.

Mr. Rissman: That is all.

Mr. Lamfrom: That is all.

Examination by the Chair.

38 Q. (By Trial Examiner Batten) How long have you worked for The Falk Corporation?

A. 26 years.

Q. Do you know what their labor policy has been during ese 26 years?

A. Yes, sir, I do.

Q. What has it been?

A. The color of the men does not make any difference—

Q. I mean with respect to labor organizations.

A. Well, I have never been told to eliminate or cross ex-ine one for a job, in respect to labor.

Q. Well, do you know whether the corporation has any licy which—do you know whether the corporation has any licy with respect to labor unions?

A. I don't know, it hasn't been written out to me, at all me.

Q. Did you ever see or hear of a letter that was sent to the men in the power house stating that "We are opposed to a union"?

A. No, not that I recall.

Mr. Lamfrom: May I correct the Examiner? The letter sent to the power house was to the effect that "We do not favor a union."

Trial Examiner Batten: Yes.

Mr. Lamfrom: It did not say "We are opposed to a union."

2039 Q. (By Trial Examiner Batten) "We do not favor a union", you never heard of that?

A. I never saw such a letter.

Q. I didn't say whether you saw it, did you ever hear of it?

A. I have heard of it, yes.

Q. You have heard of it?

A. Yes, I have heard of it here the first time, I have never been in court of any kind—

Q. Then this is a liberal education?

A. Yes, very much so.

Trial Examiner Batten: That is all.

Mr. Lamfrom: That is all.

(Witness excused.)

Mr. Engelhard: Mr. Richard Falk.

RICHARD FALK, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard) Can you see me all right, Richard?

A. Yes.

Q. My associate here thinks I am not sitting out far enough. Mr. Falk, you are the son of Mr. Harold Falk.

A. Yes, sir.

Q. How old are you?

A. 24.

2040 Q. What training have you had, professional training?

A. Well, I graduated from the University of Arizona as a

master in economics, and did post graduate work in political science.

Q. Where did you do your post-graduate work?

A. At the University of Arizona and in Washington, D. C.

Q. Are you now connected in any capacity with the Falk Corporation?

A. Yes, sir.

Q. What is your position?

A. I am a clerk in the accounting department.

Q. How long have you been a clerk in the accounting department?

A. Since June 1st, 1937.

Q. Was that the first connection you had with the corporation?

A. No.

Q. Prior to June 1st, 1937 did you have any connection with the corporation?

A. I was a clerk in the purchasing department.

Q. And prior to that?

A. That was my first job.

Q. And when did you become a clerk in the purchasing department?

A. I think that was about April 1st, 1934.

2041 Q. So that from April 1st, 1934 to the present you have been employed by the Falk Corporation?

A. Yes, sir.

Q. Now, in connection with your work for the company have you pursued your studies in political science?

A. Yes, I have.

Q. Political economics?

A. Yes, sir.

Q. And in that connection have you had any particular interest in labor relations?

A. A very great interest.

Q. Since the beginning of this year, that is, 1937, or rather since the 19th of January, when the Severson Act was introduced in the legislature by Senator Severson, will you tell us just what you have done with regard to making a study of that Act or bill, I mean that was originally introduced.

A. Well, I was sent out by the company to Madison to follow that bill all the way through; I would sometimes spend two days at Madison and sometimes three during the week, and I was in on all the important conferences on that bill. I followed it right through to its final enactment.

Q. Did you attend the committee hearings?

A. Almost every one of importance.

Q. Was this bill heard by a joint legislative committee of both houses or heard separately by each house?

2042 A. By a joint committee. Some of the amendments were heard by separate committees.

Q. Did you attend those hearings?

A. Yes, I attended almost all of them.

Q. Now, did it become known among the employees of the plant that you had shown an interest in that legislation?

A. Yes, I think so, maybe not so many in the shop as those in the office. At one time I went out to Madison, that was the first time the bill was introduced, the year before—

Q. You mean two years before.

A. Two years before, I went to Madison with a group of employees to watch the proceedings on the bill. That was the first time it was introduced.

Q. That is, you now have reference to the Labor Dispute Act that was introduced in the legislature of 1935.

A. Yes, sir.

Q. That was subsequently killed by the Senate.

A. Yes, sir.

Q. After it passed the Assembly.

A. That is right.

Q. And the Severson Act that we are speaking of now, that was substantially the same bill that was re-introduced in the 1937 legislature.

A. That is right.

Q. Did you go to Washington in your studies on
2043 labor relations?

A. Yes, I worked for a master's degree, that is, they appoint you to the National Institution of Public Affairs, which is a study group conducted non-partisan in Washington, to send college graduates to, to complete their master work. They are chosen to go down there from various colleges throughout the United States, and I was in the Department of Commerce, appointed in the Department of Commerce. I was there for six months.

Q. Was that prior to 1934?

A. Yes, sir.

Q. Now, did any of the men talk to you about the Severson Bill while it was in the process of being enacted, any of the employees?

A. You mean the first time it was introduced or the second time?

Q. No, I am not interested in what happened in 1935; I am asking about this last bill, the Severson Act that finally became a law.

A. Well, I know I talked to a great number of them about it, yes, one or two shop men and a great number of people in the office.

Pat Fealy for one was very much interested in it, and John Brever; I think I had a few conversations with him about it during the course—

2044 Q. Why did they manifest an interest in discussing this bill with you?

A. Well, they knew I was following it; they knew of my interest in politics and legislation, and I gave them to understand, or they had the understanding themselves, I don't know which, anyway neutrally we believed that we came under the State act, and any State act that was finally put through we had a great interest in it, as to how it would affect us.

Q. Why do you say you had an understanding and neutrally believed you came under the State act and not under the National act?

A. We believed until I found out, I guess it was your opinion—that I was probably wrong, that under the Wierton Steel case, that our corporation would be intrastate and not interstate; therefore the Wagner Act would not affect us, whereas the State bill did affect us.

Q. So in the course of your conference with these men views were exchanged as to what would be the ultimate result of what would be the ultimate effect in event the Severson Act became a law?

A. Yes.

Q. Now, did you talk to any persons in the cafeteria or dining room of the plant regarding the position to the Severson Act?

A. Yes, sir, some time in late March or in April I 2045 talked to Stanley Adamsky for about an hour.

Q. You mean in April or March?

A. I said late in March or early in April.

Q. How did that conversation happen to take place?

A. Well, I believed at that time that the bill was going to go through, although at that time there were many amend-

ments up, and I picked Stanley out of the Works Council as a man who I thought could understand this legislation, being on the Works Council and affecting the Works Council, I thought he would be interested; so I called him myself in the cafeteria, brought down the bill together with all the amendments, all the legislation, and he and I went through it from beginning to end, the amendments that were possible, including LaFollette Amendment 30-A, and we just hashed the whole thing out, trying to show him what effect it would have on the Works Council if that bill was passed.

Q. Was there anyone else present besides you and Stanley Adamsky?

A. No.

Q. Now, after you had this conference with Stanley Adamsky at the cafeteria, was that because there is a large round table there that is easy to get around?

A. No, there was a series of four small tables and stools, just put in place; it is quiet, you can shut the door and put your books out on the tables.

2046 Q. You had a lot of printed literature?

A. Yes, I had the whole legislative service there, with all the amendments.

Q. And at that time the amendments—

A. Were many.

Q. Many of them?

A. Yes, sir.

Q. Now, after you had this conference with Stanley Adamsky was there a further conference at the cafeteria at which other men were present?

A. There was.

Q. Will you tell us how that conference happened to take place?

A. Well, Stanley Adamsky wanted to explain, or told me he would go out in the shop after the conversation and talk to other members and tell them what we discussed and what was up, and after that he told me he was not able to explain it very well, that he didn't have a very good idea of it, and he thought it would be a good idea to talk to all of the Works Council, and I think I made the arrangement for Mr. Hydar to call in all the Works Council members so that I could talk to them along the same lines.

Q. Why did you ask Mr. Hydar to call them?

A. Well, I knew he was secretary and I thought he would have to call them.

2047 Q. In the course of events then there was a meeting of the Works Council?

A. Yes, sir.

Q. When was that?

A. I think that was about four days later; I can't place the date.

Q. You said the first conference you had with Stanley Adamsky alone was the latter part of March, or the first of April?

A. Well, as near as I can place it, it was.

Q. When was this second conference?

A. About four days later.

Q. But you cannot place it exactly?

A. No, I can't place the time.

Q. Was it before the last Works Council meeting of April 8th?

A. Yes, it was.

Q. What took place at that gathering?

A. Well, I got out all of my—

Q. At which time you say other members of the Works Council were present?

A. Well, I explained to them I had talked to Stanley Adamsky about this and I wanted to talk to all of them, with all of them, and explain just what each amendment would mean, and what LaFollette Amendment 30-A would mean if it got through, and told them if this bill would pass in
2048 that form as most of us believed at that time it would, that the Works Council would be outlawed.

Q. Did you discuss at that time or did the men discuss what would be the future—what steps would be taken in the future?

A. Yes, they asked me what could be done, or what could be done after that.

Q. Did you tell them?

A. I said they had the choice of joining any labor organization they pleased, International, National, or forming their own union if it met the requirements of the bill. We tried to phrase it under LaFollette Amendment 30-A, because we believed that would go through.

Q. Do you know as a matter of fact now whether his Amendment 30-A did go through?

A. Yes, it did.

Q. That amendment specifies certain types of activities, activities the employer cannot deal in?

A. 30-A deals mostly with what is a bona fide labor organization, throws the burden upon the labor organization to prove that it does not have the employer's hands on it; it generally.

Q. Let me ask you if this isn't what it is, that it is the position in the act which throws the burden upon the Independent Union to prove to the satisfaction of the Wis-
2049 consin Labor Relations Board that it is not a company union?

A. That is correct.

Q. In order to be registered?

A. That is right.

Q. That is, it says that the union must persuade the Board that it is not a company union?

A. That is correct.

Q. In order to be registered?

A. That is correct.

Q. Now, did you hear any more about the activities of the Works Council members after that meeting?

I now have reference to the meeting in the cafeteria.

A. No, I didn't.

Q. What is the next thing that you heard about the activities of the employees who belonged to the Works Council?

A. On April 13th.

Q. What information, just tell us what you heard then?

A. Well, I was met in the office by Frank Kokalj, having returned from a luncheon meeting, and he told me a number of the employees had gathered under the basement of the hospital and that they had looked for my father and couldn't find him, and asked me if I would come down to try to explain the Wagner Act and the Severson Act to them.

I said I would. I would do the best I could.

Q. What did you do?

2050 A. Well, he went down and I came a few minutes later and entered the room and found all of these employees there, and they said they wanted to know about the Wagner Act, they wanted to know about the Severson Bill.

Q. Did they indicate what they wanted to know about those acts?

A. They wanted an explanation of what effect it would have on the Works Council, how they could form an independent union under those clauses, what they could do and could not do; whether they could join an outside union or an inside union.

They had all kinds of questions; I can't recall all of them.

Q. What was the ultimate result of your conference with them?

A. They didn't tell me any ultimate result; they just said, "That is all", and I left.

Q. Now, when you were there, Richard, were you asked anything about incorporating, anything about the incorporation of the Independent Union by any of the men?

A. Not to my knowledge, I don't recall anything.

Q. Did you state anything to the men there about what it would cost to incorporate?

A. Well, I will change my answer on that. I was asked the question definitely, how to go about incorporating, how much it would cost, how many it would take. I said,
2051 "I am not a lawyer, I don't know that."

That was, I think, in the last part of the conversation while I was there.

Q. One of the men who attended that meeting—I believe two of them—testified here in court that you specifically stated it would cost five dollars to incorporate.

A. I deny that.

Q. Do you know how much it costs to form a corporation?

A. I could not tell you that.

Q. Under the laws of Wisconsin—

Trial Examiner Batten: You mean a non-profit corporation?

Mr. Engelhard: Yes, a non-profit corporation.

The Witness: I don't know anything about it.

Q. (By Mr. Engelhard.) Do you know what a seal alone costs?

A. No, I don't.

Q. Do you know how much fee you have got to pay the Secretary of State?

A. No, I don't.

Q. Do you know how much you have got to pay a lawyer to draft the articles of incorporation?

A. No, I do not.

Trial Examiner Batten: It depends somewhat on the lawyer you get, don't you?

Q. (By Mr. Engelhard.) Did you make any state-
2052 ment to the men there that it would take three people to incorporate?

A. I did not.

Q. Did you know at that time?

A. No, I did not.

Q. How many people it would take to form a corporation?

A. I did not then and I don't today, except what I hear.

Q. It was also testified by some of the men that at that meeting you advised the men to incorporate an independent union.

A. No, I did not.

Q. Was there any discussion there as to whether or not an independent union was to be formed, at that meeting?

A. Well, they were talking about a lot of things; that was my impression, they had it in the back of their minds to form some sort of organization of their own. I did not know what they were thinking, but the questions hit along that line, to see what was legal under the act, what they could do under the act.

Q. I understand you gave them your best opinion as to what could be done under the act.

A. I did.

Q. Was that meeting you had with them on the 13th the last contact you had with these men at any meeting?

A. Yes.

Q. Did you know that a meeting had taken place on
2053 the 12th, the day before, at the same place?

A. I may have, my father may have told me, I can't recall.

Q. Now, when you left the meeting on the 13th had you been requested by the men to call someone else to the meeting?

A. I was requested to go back and look for my father.

Q. What did you do in response to that request?

A. I went back and looked for him; he wasn't there, and so I came across Mr. Connell and I told him of this meeting below the hospital; I said, "They are looking for my father, waiting there."

He said, "Well, I will go down," and so he went down and that was the last I know.

Q. Now, do you know whether or not your father attended the meeting of the 13th?

A. No, I don't.

Q. Well, do you know whether he was there or whether he was not there?

A. I don't know definitely, no.

Q. Was a letter received by the Falk Corporation dated the 20th of April, which is an exhibit in this trial here, called

to your attention, in which Messrs. Wilson, Menz and Trost state that they had approximately 400 members, and that they wanted the Falk Corporation to recognize their organization for the membership?

A. Yes, sir, I saw it.

2054 Q. And in response to that letter did you take any action personally?

A. Yes, I think I called in Mr. Wilson.

Q. When did you call him in?

A. Friday, April 23rd, I believe.

Q. Were you present at the meeting at which Mr. Wilson, Mr. Trost, and Mr. Menz conferred with Mr. Herman Falk and Mr. Connell?

A. No, I was not.

Q. But it was in response to your call to Mr. Wilson that the three men came?

A. As I recall it, I called Mr. Wilson and asked him just what he was after and he talked to me, and said substantially that he wanted to talk to us about the recognition; so my father not being there, I called my uncle and I believe the three men went in to see my uncle and Mr. Connell in the morning and they talked for a while and then left, and returned again later in the afternoon, but I was not in the meeting and I do not know what happened except what I learned subsequently.

Q. You have learned subsequently that your uncle signed a letter that was given to the men?

A. Yes.

Q. Mr. Herman W. Falk?

A. That is right.

2055 Q. Well, is he an uncle first degree, or your father's uncle?

A. He is my father's uncle.

Q. Mr. Herman W. Falk was one of the original organizers of the Falk Corporation?

A. Yes, sir.

Q. I mean of the business, I don't know what the name was originally.

A. Yes.

Q. With two other brothers?

A. I couldn't state definitely.

Q. Your father is a son of one of the original founders?

A. I couldn't state that.

Mr. Engelhard: That is all.

Cross-Examination.

Q. (By Mr. Rissman.) Your position with the company now, Mr. Falk, is a clerk in the accounting department?

A. That is right.

Q. But because of your family relationship your interest is much greater than that of an ordinary employee?

A. Interest in what?

Q. Interest in the affairs of the business.

A. Oh, yes, naturally.

Q. What degree do you have from the University of Arizona, Mr. Falk?

2056 A. Well, Bachelor of Arts.

Q. Where did you earn your Master's degree?

A. Well, I haven't received my final degree yet; I have to finish my papers on my Washington experience before I can get it, but that is where it will come from.

Q. From Washington?

A. Yes, sir.

Q. In connection with your studies at the University and in connection with the affairs of the Falk Corporation you made quite an extensive study of the Severson Bill when it was going through the House and Senate?

A. Yes.

Q. And as a result of your studies and connection with the company you have formulated opinions, have you, as to whether—rather, as to labor relations and labor organizations?

A. Well, I have some hazy ones. I think the further along I go the less definite opinion I have.

Q. Have you ever expressed your opinions even though they may be hazy, to the employees in your conversation with them?

A. Yes.

Q. This meeting in the cafeteria, the second one where the Works Council was present, was that the entire Works Council or just employee representatives?

A. I won't state definitely, because I don't know.

Q. Was it at that meeting that you told the men that

2057 they could have an independent union or form their own independent union if it met with the requirements of the law?

A. Yes, I think I stated that.

Q. You have related to us the requirements, you had reference to the LaFollette Amendment to the bill?

A. Yes, I think so, that goes into it, and then I took into consideration if the LaFollette Amendment did not pass, it was substantially the same as the Wagner Act.

Q. Do you know if the Independent Union in this case has met the requirements of the law?

A. I know now that they don't have to meet the State law. What do you mean, 30-A?

Q. The requirements of the State act which says they shall persuade the Board it is not a company union.

A. To my knowledge they haven't got a charter from the State Labor Board, no.

Q. Well, they are not listed with the State Labor Board?

A. I don't know whether they have tried to be listed.

Q. You know they are not listed?

A. I don't know they are not, I don't know; to my knowledge they are not.

Q. You stated that prior to the Supreme Court decision—you haven't stated that, but prior to that time it was your opinion that the National Labor Relations Act did not apply to a business such as the Falk Corporation?

2058 A. That was my belief.

Q. Well, you were, as you have stated, mistaken in your belief?

A. I have found out since I was.

Trial Examiner Batten: Maybe it is not a mistake, he has had to change his mind.

Mr. Engelhard: I think the Supreme Court changed a lot of our minds on that.

Q. (By Mr. Rissman.) And in all of your conversations with these employees, with Mr. Adamsky or the Works Council, or at the meeting of April 13th it was not your intention at any of those meetings to violate the law as you understood the law to be?

A. No.

Q. If you had thought you were violating the law you would not have engaged in those activities?

A. No, I don't think so.

Q. But you may have been mistaken about your interpretation of the law in this respect, too?

A. I thought I knew pretty definitely what I could do and couldn't do.

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Q. Just as definitely as you know about the scope of the National Labor Relations Act?

A. No, I think I knew my rights, what I could do and coudln't do better than that. The other falls on a much
2059 more intricate clause, as to what is intrastate and what is interstate, I think that is a more complicated theory than what management, or management's—or, representatives of management, whatever they might be termed, do.

Q. You never have considered yourself as not a representative of management in the affairs of the Falk Corporation, have you?

A. Well, I only consider myself a representative of management when I am told that I have that authority; when I haven't, I am not.

Q. With reference to the question of authority, when you are speaking to any employees even about these labor relation matters, they look upon you in the same respect they would look upon your father or any other member?

A. I doubt it.

Q. Because of difference in years and position perhaps not with the same degree, but they do feel you are management's representative, do they not?

A. Well, I don't know what they feel.

Q. There has never been much question raised about that, has there?

A. About what?

Q. About whether you were on management's or employees' side of the fence?

A. I don't get the meaning of that.

2060 Mr. Engelhard: He stated he does not know their feelings, that is an answer to the question.

The Witness: We don't feel, there is a fence to be on one side or the other.

Mr. Engelhard: Read the last statement, please.

(The record was read.)

Q. (By Mr. Rissman.) But do you feel that in everything you have done according to your own view of it, you have been within the requirements of the National Labor Relations Act?

A. I believe so.

Mr. Rissman: That is all.

Trial Examiner Batten: Have you Exhibit 31, please.

Examination by the Chair.

Q. (By Trial Examiner Batten.) Mr. Falk, Board's Exhibit No. 31, "An important message," I wonder if you will look at that please, and tell me whether you had anything to do with its preparation?

A. I know I did not, except maybe turning in the names of the Senators and Assemblymen over to them.

Q. Well, this exhibit states that "We are disposed to the Labor Disputes bills."

As far as you know has that been the position of the company, I mean as respects the Severson Act?

A. Yes.

2061 Q. Generally speaking they have opposed that.

Now, you have studied in college quite a bit of economics, political science and labor relations.

A. Yes.

Q. From your study of those subjects and so forth can you tell me what the purpose of the Severson Act was, who it was to have benefited, why was it being passed?

A. Well, I guess the preamble of the bill says that due to the fact that the employer has a greater advantage over unorganized employees and the result of this leads to some hardship and causes strikes, that this act is to be passed to allow labor to organize for the purpose of collective bargaining.

Q. Then generally speaking the bill was passed for the principal purpose of protecting the employee, is that right? Whether rightly or wrongly, I mean that was the purpose of it?

A. My interpretation is that the bill does not follow the preamble.

Q. I am asking you if that isn't the general purpose, supposedly of the National Labor Relations Act or the Severson Bill, either one? I mean is it primarily passed on the theory that it is being passed for the protection of the employee in his right to organize, generally speaking?

A. And his right to work.

2062 Q. Yes, isn't that the general purpose of it?

Mr. Lamfrom: Mr. Examiner, in the first part you put in the word "supposedly," and I presume you still—

Trial Examiner Batten: Well, I put it in because I am not certain; not having read the bill, I am not certain that was the purpose, but I am asking this witness.

Q. (By Trial Examiner Batten.) Now, take the Wagner

Act, the National Labor Relations Board Act, was that primarily passed for the benefit of the employees and their right to organize, is that right?

A. Well, I thought it was, yes, I would say the bill does that, although the preamble more or less indicates they have the right to choose—

Q. I mean under the terms—

A. Yes.

Q. —they choose for themselves. In other words, there is no provision in this bill that extends to the employer and any particular privileges, does it?

A. No.

Q. I mean it is all supposedly for the benefit of the employee, isn't it?

A. Well, I would say sometimes for the employee and sometimes not for the employee.

Q. That was not the question.

Trial Examiner Batten: Will you read the question 2063 please.

(The question was read.)

A. Yes, I would say as against the employer, yes.

Q. (By Trial Examiner Batten.) Yes.

A. Yes.

Q. Now I wish you would explain to me why you were interested as a representative of management and why did the company keep you at Madison opposing a bill which is for the benefit of employees.

Now, you just explain that, why your extreme interest in it?

A. I will tell you, we did not go there to oppose the bill. I was working very closely with Mr. Story of the Allis Chalmers Company, and he had a substitute bill which we believed would protect the employee from coercion of any kind, from any source, and would still give them every right—

Q. You mean coercion from the union or the employer?

A. Yes, absolutely, I was in favor of the bill. Our statement stands in favor of the bill, except for certain changes which we believed sincerely would protect the employee and his right to join or not join, or to join any union or not to join any union.

Q. Your interest then in going in behalf of the employee was not because—I mean not because of any direct benefit to the employer?

2064 A. No, except we knew the bill would outlaw the Works Council, and we would like to see a bill in there hat would give the employees freedom of choice, absolute reedom of choice in his bargaining agency.

Q. That is what I mean, your only purpose in going was o see that the employee was fully protected in any choice he night care to make?

A. Well, what we proposed did that, yes.

Trial Examiner Batten: That is all.

Mr. Engelhard: May I ask a question in order to clear up this matter somewhat.

Redirect Examination.

Q. (By Mr. Engelhard.) Mr. Falk, this statement which is Exhibit No. 31, that the Trial Examiner now has in his hand, was that sent out in connection with the present Severson Act or was that sent out in connection with the original Labor Disputes Act which was in the Legislature of 1935?

A. The original Labor Disputes Act.

Trial Examiner Batten: Well, I understood this had no reference to it—I understood what was put out in 1935 had no reference to the Severson Act.

Q. (By Mr. Engelhard.) In other words the two bills mentioned in that notice, in that important message, were the first Severson Act and the first Sigman Act?

A. That is correct.

2065 Q. And that bill was killed by the Senate?

A. Yes, it was.

Q. This has no reference whatever to the legislation that was pending in the 1937 Legislature?

A. No, it did not.

Mr. Engelhard: That is all.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: I have no questions.

Mr. Lamfrom: I would like to ask Mr. Falk one or two questions.

Q. (By Mr. Lamfrom.) Mr. Falk, in working out the relations between the Falk Corporation and the Works Council as you knew them, did you or did you not feel that that constituted a relationship that was beneficial both to the employer and employees with respect to hours, wages and working conditions of the Falk employees?

A. I believe it was beneficial and I think the record convinces me more.

Q. Was it or was it not the desire of the Falk Corporation in relation to its employees, to have the law of the State of Wisconsin in such condition that it would be legal to continue the Works Council?

A. It was.

Q. Was the opposition of the Falk Corporation as indicated in Exhibit 31,—will you read that, I haven't got my glasses.

2066 Trial Examiner Batten: Exhibit 31.

Q. (By Mr. Lamfrom.) Based as far as the company's own interests in opposing that bill, on the basis the company realized that the Works Council would be, that the Works Council would be in effect outlawed after the Severson Bill was passed as it was originally introduced?

A. Yes, sir, we believed so.

Mr. Lamfrom: That is all.

Trial Examiner Batten: That is all.

(Witness excused.)

Trial Examiner Batten: I believe we will have a recess for ten minutes.

(A short recess was taken.)

Trial Examiner Batten: Are we ready to proceed, Mr. Engelhard, or are you waiting for a witness?

Mr. Engelhard: No, I think we are ready to proceed.

Mr. Lamfrom is going to examine the next witness.

Trial Examiner Batten: I heard you ask if someone was here.

Mr. Engelhard: Yes, we were waiting for another witness but we will put him on.

Off the record now, please.

(Discussion off the record.)

Trial Examiner Batten: I think we had better proceed.

Mr. Engelhard: Mr. Cibulka.

2067 JOSEPH CIBULKA, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Engelhard.) Will you state your name, please.
A. Joseph Cibulka.
Q. What is the first name?
A. Joseph.
Q. And the last name?
A. C-i-b-u-l-k-a.
Q. Mr. Cibulka, what position do you hold with the Falk Corporation?
A. I am supervisor of cost and payroll department.
Q. Have you with you any notes that you have been requested to bring?
A. Yes.
Q. Now, before you came here were you requested to abstract from your records the number of employees of the Falk Corporation on certain days?
A. I was.
Q. What days are those?
A. April 23rd, 1937, and May 5th, 1937.
Q. Will you take your notes referring to May—no, to April 23rd, first, and will you state in what form you made, that is, what the calculations are?
2068 A. These are made up on the basis of the number of employees in each department.
Q. On that day?
A. On that day.
Q. What did you use as a basis for this?
A. Our payroll.
Q. Your payroll as of that day?
A. Yes, sir.
Q. For the 23rd?
A. Yes, sir.
Q. And also as of the payroll of May 5th?
A. Yes, sir.
Q. Now, will you name the department and give the number of men in the specific department?
A. In the foundry on April 23rd, 526.
Mr. Rissman: I did not get that.

The Witness: April 23rd, number of employees, 526.
Do you want May 5th?
Q. (By Mr. Engelhard.) No, just take April 23rd first.
A. Machine shop, 607.
Pattern shop, 40.
Drafting and engineers, 79.
Maintenance department, 61.
Welding—

Trial Examiner Batten: Just a minute, not quite so
2069 fast, please.

Mr. Rissman: Just take it a little easier. How many in the maintenance, please?

The Witness: 61.
Welding, 54.
Heat treat, 8.
Powerhouse, 15.
Office and payroll, 95.
Miscellaneous, 45.
Q. (By Mr. Engelhard.) Can you state what you mean by "Miscellaneous"?
A. Superintendents, foremen, sales—salesmen.
Q. (By Mr. Lamfrom.) What is the total?
A. 1530.
Q. (By Mr. Engelhard.) Now, take May 5th, 1937, will you read the same departments and give us the number of employees in each department?
A. Foundry, 527.
Machine shop, 610.
Pattern shop, 40.
Drafting and engineering, 80.
Maintenance, 61.
Welding, 55.
Heat treatment, 8.
Powerhouse, 15.
2070 Office and payroll, 95.
Miscellaneous, 45.
Q. And what is that total?
A. 1536.
Q. Now, I notice you have a third column there, can you tell me what that third column is?
A. That is the number of employees by the same divisions as of June 15th, 1937.
Mr. Engelhard: May I ask you, Mr. Rissman—
Trial Examiner Batten: There is one here for June the 15th.

Mr. Lamfrom: I might call attention of all the parties here to the fact that the stipulation on file gives the number of employees under the same classes as of June the 15th, 1937. That is already stipulated.

Trial Examiner Batten: Then it is not necessary.

Mr. Engelhard: That is why I asked whether or not those figures are already in the record by means of the stipulation.

Mr. Rissman: Mr. Engelhard, the witness has described those who are termed "Miscellaneous".

Now, will you have him state, or we can stipulate that the "Miscellaneous" number in the stipulation includes the same type of employees as the "Miscellaneous" he has testified about.

2071 Q. (By Mr. Engelhard.) Mr. Cibulka—

A. Yes, sir.

Q. —the 54 miscellaneous persons under the column, June 15th, the same 54 being mentioned in the stipulation, are those under the classification "Miscellaneous" the same type of people that you referred to when you said 45 under date of April 23rd and under date of May 5th?

A. They are the same.

Q. Foremen, superintendents and salesmen?

A. That is right.

Q. Now, have you with you also some notes on the payments made by the Falk Corporation to the men who attended some meetings?

A. Yes, I have those.

Q. Will you produce your notes.

Before we get into that subject, is it correct to say, Mr. Cibulka, that the employees whom you have classified in the various classifications other than miscellaneous are in no respects supervisory employees, such as foremen or superintendents?

A. No, they are not supervisory.

Q. Those figures that you gave are in every instance what you might call workers?

A. That is right.

Q. Who have no supervision authority?

2072 A. Outside of "Miscellaneous" and "Office and payroll department".

Q. Do you include in this list office and payroll departments?

A. In this list of the number of employees?

Q. Yes.

A. Yes, they are in here.

Q. (By Trial Examiner Batten.) Where does straw-boss come in, in this classification? Straw-boss, pusher or sub-foremen?

A. Well, a straw-boss would be paid on an hourly basis, he would be in this detailed classification by departments.

Q. In other words, if you had any straw-bosses or seconds or pushers or lead-men they would be under your hourly classification?

A. That is right.

Q. By departments?

A. That is right.

Q. Have you any record to show as to how many of that type of men you have?

A. I have no record on my person.

Q. Is there any way you can tell?

A. I can.

Q. From your records in the office, who the straw-bosses are?

2073 A. Yes, sir.

Q. Pushers or lead-men?

A. Yes, sir.

Q. Could you furnish us that information tomorrow morning?

A. Yes, sir.

Q. Will you do that?

A. You are referring now to assistant foremen?

Q. Assistant foremen, straw-bosses, pushers or lead-men.

A. Yes.

May I ask what you mean by "lead-men" or "pushers"?

Q. Well, in some places they call them straw-bosses or pushers; in other words, I wouldn't know what you call them, but in some places they call them lead-men, some places second-hand.

In other words, the assistant foremen or straw bosses, you have those by name, have you?

A. Yes, sir.

Q. Well, will you bring in a list of the names of those men that you classify as straw-bosses or assistant foremen?

A. Well, I will do that.

Mr. Rissman: Off the record, please.

(Discussion off the record.)

Mr. Engelhard: That is, you will accept the list as it is furnished?

Mr. Rissman: Yes.

2074 Mr. Engelhard: Suppose you sign your name to it, Mr. Cibulka, so we will know that is the list requested by the Trial Examiner.

The Witness: Yes, sir.

Q. (By Mr. Engelhard.) Now, referring to your notes on the men who were paid while attending meetings on the 12th of April have you the classes and dates?

A. I have the classes here under the dates of April 12th, 13th, 14th and 15th.

Trial Examiner Batten: You don't need to put this in the record.

(Discussion off the record.)

Q. (By Mr. Engelhard.) Do you know whether or not any men who attended the Works Council meeting on the 8th and who were not members of the Works Council were paid?

A. As far as they were there, they were all paid; everyone of them who attended the meeting.

Q. Of the 8th?

A. Of the 8th.

Q. Do you know whether or not any of those men had subsequent deductions?

A. Not for attending the meeting of the 8th of April.

Q. Not for that meeting?

A. No.

Q. Pardon?

2075 A. No.

Mr. Engelhard: Well, in view of that fact, Mr. Examiner, do you want that list?

Trial Examiner Batten: Yes, I still want a list of those who were ex-members, not regular members.

Q. (By Mr. Engelhard.) Then you will make such a list and sign it also?

A. Yes, sir.

Q. Now, in connection with your notes here what are the facts?

A. My attention was first directed to these meetings by means of a daily time ticket which originates in the shop, and to which these men charge their time spent on various jobs or whatever they may be doing during the day.

At the time those tickets reached me our office did not know the nature of those meetings.

As a result, the payroll period which ended on April 15th, the payroll was compiled and we did not discover the nature of these meetings until the checks had already gone out.

Q. You mean your department didn't?

A. That is right. Well, when we find them—of course, we were specifically instructed that the men are not to be paid for those meetings.

Q. Then what happened subsequent to the 15th? You
2076 said they were paid on the 15th?

A. No, the pay period closed on the 15th of April.

Q. When you made up your payroll after the 15th of April you included in the payroll the time that the men attended these meetings?

A. That is right.

Q. But you said you didn't know what that time was?

A. That is right.

Q. And subsequently what happened?

A. We were instructed that all time of attending these meetings was not to be paid for.

Some of these men had already received their checks and it was necessary then to deduct it on the following pay.

Q. When was that?

A. That pay was on the 8th.

Q. Did you know when the men were paid their checks on the payroll which was made up as of the 15th?

A. The night men were paid on the night of April 22nd and the day men on the morning of April 23rd.

Q. Now then, your notes here shown on the—the notes you have here show the individuals were paid certain amounts.

A. That is right.

Q. Will you indicate what they were paid?

A. Do you want me to read the names?

Q. Yes.

2077 A. H. Snyder is No. 2226, 4.1 hours, $2.66.

Clock No. 2323, Stanley Adamsky, 11.9 hours, $8.33.

No. 2443, G. Kassin, 3.4 hours, $2.07.

No. 2421, Frank Russitti, 4 hours, $2.48.

No. 24227, Robert Gillette, 4 hours, $2.28.

No. 2941, William Neal, 9 hours, $4.77.

No 3025, Nat Bernklan, 3.3 hours, $2.87.

No. 3151, M. Gagliano, 2 hours, $1.50.

No. 50155, L. Greget, 8.4 hours, $8.15.

No. 50240, H. Landry, 16.1 hours, $13.20.

No. 50304, Dan Martin, 5.5 hours, $4.81.

No. 50374, H. Jones, 12.1 hours, $9.32.

No. 50378, J. S. Wolf, 9.5 hours, $6.37.

No. 50709, J. Trost, 5.8 hours, $4.99.

No. 6003, E. Kothrade, 3.3 hours, $2.67.
No. 6027, J. F. Mitschka, 6.5 hours, $5.33.
No. 7305, William Kirsch, 8 hours, $7.36.
No. 7306, Frank Kokalj, 4 hours, $3.00.
No. 7412, Jacob Sattler, 1.1 hours, $1.25.
That is the complete list.

Q. That covers all of the meetings of the 12th, 13th and 14th, and you say you have them the 15th—

A. That covers all of the meetings that were mistakenly compensated for on those days.

Q. Now, then, your records show subsequently the
2078 amounts you have read into the record were deducted from each pay check?

A. They show that.

Q. Were you requested to bring any additional information here?

I am just asking for my own information.

A. No.

Q. That is all you were asked to bring?

A. Yes, sir.

Mr. Engelhard: Is there anything in addition, Mr. Rissman, that we agreed to produce here from him?

Mr. Rissman: I don't recollect anything further; I think that is all, unless the Examiner wishes—

Mr. Engelhard: Do you recall, Mr. Examiner?

Trial Examiner Batten: No.

Mr. Rissman: I think that is all we asked.

Mr. Lamfrom: Now, it is understood the witness is to prepare that list of names that you asked him for, Mr. Batten.

Trial Examiner Batten: Yes, and the ex-members of the Council.

Mr. Lamfrom: That is right.

Trial Examiner Batten: That is all that I can think of.

Mr. Engelhard: And the socalled straw-boss list.

Trial Examiner Batten: I think that is all.

Mr. Lamfrom: Just a moment.

2079 Trial Examiner Batten: Oh, just a moment.

Q. (By Mr. Engelhard) Mr. Cibulka, what do you define as a straw-boss, what is your definition of straw-boss?

A. I wouldn't entirely rely on my own definition for that. I believe he is a man who is a sort of assistant to the regular foreman, takes care of perhaps some detailed work that the general foreman does not have time to, or relies on another man to take care of

Q. Well, does a straw-boss have any right to hire or fire?
A. He has not.
Mr. Engelhard: That is all.
Q. (By Mr. Rissman) Does he have a right to recommend the firing or hiring of an employee?
A. Oh, I believe he has.
Mr. Rissman: That is all.
Trial Examiner Batten: I don't think there is any question about what we mean by straw-boss.
Mr. Engelhard: Just so we know he has something in mind when he looks for these names.
Now, Mr. Examiner, have you any other classification except that particular type that he has now defined?
Trial Examiner Batten: Well, I might ask, your idea of a straw-boss is a man who sort of acts as assistant to the general foreman?
The Witness: That is right.
2080 Trial Examiner Batten: For instance I think there was one man here today—what was his name?
Mr. Rissman: Trost.
Trial Examiner Batten: (Continuing) Mr. Trost, who at times had four or five men helping him assemble a big piece of equipment and at times he has to give them directions.
Now, would that be included in your idea of what a straw-boss is?
The Witness: Not unless he did that generally.
Q. (By Trial Examiner Batten) In other words, in this list of names are included those men who you know are generally considered to be straw bosses?
A. Whose regular duty it is to assist—
Q. Yes.
A. —the foreman.
Trial Examiner Batten: Yes, I think we understand what it is.
Mr. Clark: I would like to ask a few questions.

Cross-Examination.

Q. (By Mr. Clark) Mr. Cibulka, I notice that Mr. Landry received $13.22. How many hours did he put in attending these meetings?
A. That is on the record, 16.1 hours, I believe.
Q. (By Mr. Engelhard) That is the largest number of hours you have on that list, is it not?

2081 A. That is right.

Q. What is the next largest number of hours?

Trial Examiner Batten: Now, just a minute, he was going o explain.

The Witness: I can explain the reason for that.

Mr. Landry at that time worked on a shift other than the one during which these meetings were held, which resulted in his time for that day being in excess of eight hours.

The policy of the company is to pay time and a half after eight hours work, with the result that a lot of that—in fact practically all of Mr. Landry's time includes that wage at time and a half, at the time and one half rate.

Q. (By Mr. Engelhard) Then is this correct to say: that the 16.1 hours you have there in fact represents more time than the actual number of hours?

A. These are payroll hours, they are not actual hours.

Trial Examiner Batten: That was the amount deducted, not the time actually spent at the meetings.

Mr. Engelhard: I see.

Q. (By Mr. Clark) Are there any night men on that list?

A. I believe Harry Jones is a night man, and I don't know but what Mr. Neal is a night man, Bill Neal.

I am not exactly positive about what shift some of these fellows worked on, I couldn't pick them out offhand.

2082 Q. Now, Mr. Cibulka, with reference to the method used in the payment of the men at the powerhouse, are you familiar with that?

A. I am.

Q. Is there any difference between the way they are paid or the classification than other men in the plant?

A. The powerhouse men are paid on a monthly salary basis.

Q. Well, you have some monthly salary men in the plant, too, don't you?

A. Yes, surely.

Q. There is no distinction made in the payroll with the men in the powerhouse as compared with other men in the plant, is there?

A. There is no distinction, that is, they are not in the supervisory force, since the supervisory force is all paid on a salary basis. The powerhouse is not paid on a monthly salary basis, but they are included in the shop wage group.

Q. And the company has always had that inclusion, that is, the powerhouse included in the wage group at the plant?

A. That is right.

Mr. Clark: I think that is all.

Q. (By Mr. Rissman) Are there any employees in the plant, excluding now the powerhouse, other than supervisory employees who are paid on a monthly basis?

A. Well, the plant, our draftsmen and engineers are paid on a monthly basis.

2083 Q. And aside from those?

A. No, the salary list includes supervisory. There is one man that I know of who works on a salary basis, who is to be included in the shop.

Q. Who is he, what kind?

A. He is a teamster.

Q. With that exception of the teamster, the powerhouse, the drafting room and the supervisory employees, everybody else is paid on an hourly basis?

A. That is right.

Q. (By Mr. Engelhard) How about the clerical workers, the office workers?

A. The office workers, that is, the shop clerical, the shop clericals are paid on an hourly basis, that is the departmental timekeepers.

Q. (By Mr. Rissman) Yes, how about the main office?

A. The main office clerical is paid on a monthly salary basis.

Mr. Rissman: That is all.

Mr. Engelhard: That is all.

Mr. Clark: That is all I have.

Trial Examiner Batten: That is all, Mr. Cibulka.

(Witness excused.)

Mr. Lamfrom: Now, Mr. Examiner, outside of three or four witnesses who are employees of the powerhouse,
2084 whom it is not convenient to bring in just at this time and their testimony will be short, and also the possibility of going over the transcript we might want to introduce a lttle evidence here and there to close up the case, our case will be covered by the testimony of Mr. Falk who is here now.

Trial Examiner Batten: Do I understand you would like to have Mr. Falk testify now?

Mr. Lamfrom: Yes.

Trial Examiner Batten: With the privilege tomorrow—

Mr. Lamfrom: Tomorrow morning of having these powerhouse men.

Trial Examiner Batten: Might I ask you, Mr. Lamfrom,

if you will—of course, you have two or three powerhouse men?

Mr. Lamfrom: Yes.

Trial Examiner Batten: You had better—

Mr. Rissman: Notify Mr. Goldberg.

Trial Examiner Batten: Yes, Mr. Goldberg had better be notified. Will one of you gentlemen notify him?

Mr. Rissman: I will do that.

Trial Examiner Batten: How long do you anticipate the two or three powerhouse men will take?

Mr. Lamfrom: I think the whole business including cross-examination can be wound up inside of a half an hour.

Trial Examiner Batten: What I was thinking about 2085 was, so that Mr. Clark could make his plans to—you will examine Mr. Falk tonight?

Mr. Lamfrom: I do, yes.

Trial Examiner Batten: So that Mr. Clark may anticipate that he can start by ten o'clock at the latest, tomorrow morning.

Mr. Lamfrom: Oh, yes.

Trial Examiner Batten: And probably before.

Mr. Lamfrom: Probably, yes.

Mr. Clark: Are we planning a night session?

Trial Examiner Batten: Not tonight. We have made sufficient progress, so that I don't think it is necessary.

So that you could plan, Mr. Clark, on sometime between nine-thirty and ten o'clock tomorrow morning.

Mr. Lamfrom: May we have a short intermission, if the Examiner please?

Trial Examiner Batten: I think that is a very good suggestion.

Mr. Lamfrom: You and I seem to agree on that, Mr. Examiner.

(A short recess was taken.)

Trial Examiner Batten: I believe we are ready to proceed.

Mr. Lamfrom: Mr. Falk, will you take the stand now, please.

2086 HAROLD S. FALK, a witness called by and on behalf of the respondent, being previously duly sworn, was examined and testified as follows:

Direct Examination.

Trial Examiner Batten: You have been sworn, I believe, haven't you, Mr. Falk?

The Witness: Yes, sir.

Trial Examiner Batten: That is right.

The Witness: Yes, sir.

Q. (By Mr. Lamfrom) How old a man are you, Mr. Falk?

A. I will be 54 in December.

Q. Are you a college graduate?

A. Yes, sir.

Q. From what institution did you graduate?

A. University of Wisconsin.

Q. What was your training while in college?

A. I took an engineering course, graduated in 1906.

Q. Did you receive a degree as a result of your college course?

A. I did.

Q. And what was that?

A. Bachelor of Science?

Q. Have you since that time received any other or further degrees from any colleges?

A. I received an honorary degree from the Univer-

2087 sity of Marquette in Milwaukee.

Q. What was the occasion of that?

A. Well, I think it was in recognition of some apprentice work that I did—that I had done here in the city.

Q. How old were you when you first entered the employment of the Falk Corporation?

A. Well, I put my first summer in, in 1900; I think I was about 17 years old.

Q. Going back to your engineering training, what kind of engineering work did you take?

A. Well, I took a rather mixture of engineering.

There was at that time no specific metallurgical course offered at the university but I wrote by thesis in metallurgy under H. F. Moore, who later went down to the University of Illinois.

Q. Did you enter the employment of the Falk Corporation immediately after you finished college?

A. Permanently, yes.

Q. What was your employment at the beginning of your relations with the respondent here?

A. Well, I worked in the maintenance department at the time.

Q. In working in the maintenance department did you have contact with the employees of the company?

A. I worked right along with them.

2088 Q. Did you start on an hourly basis or a daily basis, or a monthly basis?

A. Well, my—I think when I started to work there during the summer, I got so much for the summer's work.

Q. You worked there during the summer?

A. My very first employment, yes.

Q. Now, after you left the maintenance work what department were you in?

A. Then I got into the foundry as assistant to the superintendent of the foundry.

Q. And for how long a period were you in that employment?

A. Oh, I don't recall, probably three or four years, maybe five.

Q. While you were in that employment did you have a close and pleasant contact with the employees in that department?

A. Well, I was constantly in the plant with the men.

Q. You talked with them?

A. Always.

Q. Did you get their ideas in both the maintenance work and in the department you are now testifying to, their ideas about labor relations and employment matters generally?

A. I feel pretty sure I did; it is pretty hard to work shoulder to shoulder with these fellows without absorbing a little of that.

Q. Now, after you finished this foundry department

2089 what did you do?

A. Well, I was superintendent of the foundry for a while.

Q. In that respect while in such employment did you have general supervision of the foundry?

A. That is right.

Q. And about how many employees were there over whom you had supervision? I am only asking, of course, for approximate figures.

A. I guess it would be maybe 200.

Q. Your duties as superintendent caused you to mingle and come in contact with all the men from time to time?

A. Very closely, yes.

Q. You conversed with them and learned what their ideas were about their relations with the Falk Corporation during that time?

A. I would say, yes.

Q. And after you—what was the next job that you had?

A. Well, I think after the—after my job as superintendent of the foundry I became general superintendent of the plant.

Q. About when was that?

A. Well, that was just a little previous to the war, I don't remember exactly the date, somewhere around 1913 or 1914, I guess.

Q. How long a time were you general superintendent
2090 of the plant?

A. Well, until about 1919, I guess, 1918 or 1919.

Q. 1919?

A. Somewhere along about that.

Q. During that time did you have occasion to mingle in a general way with the men employed by the company in practically all departments?

A. Yes, I did.

Q. Did you come in contact with the employees during the time you were the boss?

A. Yes, I did.

Q. During that time did you have occasion to confer with employees and get their reactions, actions and reactions with respect to employment relations with the Falk Corporation?

A. Yes, the fact of the change in title did not make very much change in my duties except spread them a little bit further, that was all.

Q. Then after you ceased to be general superintendent what was your office?

A. I think it was in about 1920 or 1921—I don't remember exactly—then I was made vice president and works manager.

Q. And you have been in that position ever since?

A. Every since, yes, sir.

Q. Up to the present time?

A. Yes, sir.

2091 Q. Since you became vice president and works manager has there been any change in your contacts with the men other than they may be less frequent?

A. Not very much.
Q. Have you still gone in and out and around about the ifferent departments of the plant and kept in contact with he men employed?
A. I still spend a great deal of time in the plant, yes, sir.
Q. Do you know many of them personally?
A. Quite a few, yes.
Q. Now, during the time that you advanced in the Falk Corporation in accordance with your testimony did the number of men the corporation employed increase?
A. Yes, quite considerably.
Q. And there is now employed by the corporation several undred more employees than there were at the time when ou first formed your connection with it?
A. Oh, yes.
Q. Now, Mr. Falk, have you held any offices here in the ity of Milwaukee of a public nature?
A. Yes, I am a member of the Vocational School Board.
Q. What is the Vocational School?
A. Well, it is a school that takes the young people who ave to work for a living and gives them schooling according to the State law, a half day each week, and that is com 092 pulsory up to the age of 18, I believe, unless they have had high school.
Q. What is the—strike that out.
Is the school a large institution?
A. They have about 18,000 youngsters in this school.
Q. Is it a nationally known institution?
A. Nationally and I think internationally, yes, sir.
Q. And it is run by the City of Milwaukee?
A. Yes, that is right.
Q. It is a public institution?
A. A public institution.
Q. And how long have you been on the board of the Vocational School?
A. Seven or eight years, I believe.
Q. Is that position by appointment?
A. It is, I think you would call it appointment by the egular School Board.
Q. The regular School Board of the City of Milwaukee ppoints the members of the board of the Vocational School?
A. That is right.
Q. And are you president of that board at the present me?

A. I am now, yes.

Q. And how long have you been president of the board?

A. I think about two or three years, I am not sure.

Q. How much time in a general way do you devote
2093 to the interests of the Milwaukee Vocational School?

A. Well, we have regular meetings once a month and then there are occasions when I go down or some of the faculty, that is, the managerial end of the faculty, whatever you would call them, come down to see me or I go and see them; it is pretty hard for me to tell how much time.

Q. That is a position of honor, and not one dependent upon compensation, is it not?

A. There is no compensation.

Q. Now, you spoke of attention to apprentice work, will you kindly explain what you mean by that and what, if anything, you have done in that regard in the city of Milwaukee?

A. Well, I got rather interested in it about 1920 or 1921, because I felt very distinctly that there was a lack of training going on among the metal trades group in the city of Milwaukee, and as usual, when you find fault with others, why, they give you a job, and that was the way I got the job of chairman of the Apprentice Committee of the Metal Trades Association.

Q. What does that committee do? Give us an idea of its operations?

A. Well, what we tried to do was to revive the apprentice training plan among the metal trades group here and tried to bring into being a program that was up to date and that would fit into the present arrangement that you find in
2094 business where in most cases management is a little bit removed from the direct contact with the people.

Q. Was there a school maintained in connection with that venture?

A. We used the Vocational School as the school for the curricular work and used the shops for the related work.

Q. And I suppose that in your connection with the Vocational School and apprentice work that you have come in contact with the youth of the city?

A. Yes, I have.

Q. And you have talked with them and discussed matters of general interest with them from time to time?

A. Well, I have talked to them on a good many occasions, and we had at one time 150 of them in our own plant.

Q. And you have gathered some of their ideas and opinions and aspirations with relation to all employees?

A. I think I have decidedly, because many of the boys used to come and sit down and talk with me about it.

Q. You have devoted a considerable portion of your time, have you not, to that apprenticeship school?

A. For a period of years I did, yes.

Q. About how much of your time and energy?

A. That is difficult for me to say.

Q. I mean, would you say you devoted more than hour or two a day or week or a week a month? Just to get a sort of mosiac of your activities?

2095 A. That is rather difficult, Mr. Lamfrom. There were occasions when a good bit of time was taken up with them, and then go along again for a period and there wasn't any great activity.

It is difficult for me to make an estimate that would be worth anything.

Q. Do you think that your contacts in the plant with the men spread over the period which you advanced in the Falk Corporation, contributed to your understanding of the problems concerning employment relations?

A. I hope I did.

Q. Do you think so?

A. I do.

Q. Do you think anything has been added to that comprehension of the problems that arise in those relationships by your Vocational School work and also your apprentice training work?

A. Yes, I do.

Q. Now, getting into the more immediate present and less remote past, when were you aware of any agitation in the Falk Corporation plant on the part of the C. I. O. union?

A. I don't think I can fix that date.

Q. Well, approximately the month.

2096 A. Well, some time previous to the meeting that I attended under the hospital I should say, but just how long, I would hesitate to say.

Q. Do you remember about the time the meeting in the hospital was held?

A. It was some time in the afternoon, I think.

Q. Now, I mean the time of the month or the month.

A. It has been repeated here so often that it was the 12th of April, that is the only way I know what the date is.

Q. Well, some time prior to then, or around the time of the 12th, you became aware of the fact that there was a campaign on at the Falk Corporation to get members in the C. I. O. union?

A. I would say that is right.

Q. Who brought that to your attention?

A. I haven't the slightest idea.

Q. Do you remember?

A. No.

Q. When that was brought to your attention did you yourself do anything to stop that activity?

A. Not that I recall.

Q. Did you as the vice president and works manager of the Falk Corporation, issue any instructions to any of the other officers or to superintendents to stop or interfere with such a campaign?

A. No.

2097 Q. Did you have any discussion with Mr. Herman Falk, the president of the company, with reference to the fact that this campaign was going on? I mean at or about the time you heard about it.

A. I imagine I did.

Q. Well, just attempt to get your memory back to that time and see whether you can answer that question a little more definitely?

A. I don't think so Mr. Lamfrom, because there was hardly a day went by that I didn't have some conversation with him and I am perfectly certain in those conversations that was mentioned.

Q. Now, was it considered by you an important piece of information that these activities of the C. I. O. union were being carried on in the plant? Did you consider that a matter of importance as vice president and works manager of the Falk Corporation?

A. Yes, I would say I did.

Q. Now, from what aspects or for what reason would you consider that matter important?

A. Well, I was rather disappointed about it, to tell you the truth.

Q. Go a little more in detail for the reason.

A. Well, I felt that we had always gotten along with our people in pretty good shape without any outside as-

2098 sistance and I thought we got on very amicably and very satisfactorily with it, and it was quite a disap-

ointment to me to think that some fellows would go to an utside source for that sort of contact.

Q. You did not feel, did you, that were these employees o go to an outside organization, it was any more than an xercise of their rights?

A. No.

Q. At that time did you have any thought or discuss a lan to attempt to stop the activities of unionization as rep-esented by the C. I. O. in the plant?

A. No, sir.

Q. At that time were you familiar with the fact that the Wagner Labor Relations Act was the law of the land?

A. Yes.

Q. And that it gave to labor organizations and emloyees ertain rights that they had not had before?

A. Yes.

Q. Were you familiar with that in a general way?

A. Yes.

Q. Will you now tell me in what respect at that time you new that the Wagner Labor Relations Act had changed the egal rights of employers and employees in their employment elations, the essential things as you knew them?

A. Well, I simply knew that the Act gave them the 2099 right to choose whatever agency they wanted to represent them, and that the employer was duty-bound not o coerce or persuade or threaten in any way their activities.

Q. But the fact that that was the legal situation as brought bout by that act occurred to you at the time you heard the C. I. O. were getting members in the plant, and you felt it was rather a disappointment to you?

A. Yes, I think I did.

Q. Did you at that time, referring to the time when you eceived this information, have any thoughts about the future f the Works Council as being affected, first, by this C. I. O. ctivity?

A. No, I don't think I did at that time, I don't think that ntered my mind at all.

Q. Did you have any thought as to whether or not the tatus of the Works Council was being affected by the Labor elations Act, the National Act?

A. No, I don't think I did, I didn't give that very much ought.

Q. Did you at any time subsequent to April 12th or 13th

have any idea as to whether or not the Works Council situation would be affected by the socalled Severson Bill?

A. Yes, there was a good deal discussed just around that time that brought it pretty forcibly to the front.

Q. That is, there was discussion about the Severson
2100 Bill and there was discussion about the C. I. O.?

A. Well, the Wagner Act, too, because of the Supreme Court activity, that was about that same time, there was a good deal of discussion, not only at the time, but in the newspapers and all over, so that you would be bound to be conscious of it.

Q. It appears that the Supreme Court upheld the validity of the Wagner Act on April 12th.

A. It was around that time, I can't pin it down.

Q. Well, as vice president and works manager you were doing some thinking, weren't you, about, around that time, April 12th, because of the fact that the C. I. O. was active in the plant, the Severson Bill was pending in the Legislature and the Supreme Court had decided the Wagner Act valid?

A. Yes, I would say so.

Q. Was your thought in respect to the items or elements discussed, towards whether or not the Works Council should be kept up or whether the Works Council should be abandoned, ended and abandoned?

A. I don't think it was, that didn't enter the picture very seriously with me.

Q. Well, your relations at that time, taking the three items, or any one of them, was immediately about to change your relationship—by your relationship I mean the relationship of the Falk Corporation, to its employees in re-
2101 spect to dealings with them in collective bargaining.

A. Yes, I think that is right, I couldn't help but get that.

Q. Did you have any idea or make any plan as to whether —as to how you would meet the change which seemed imminent?

A. No, sir.

Q. Did you discuss that question with any of your co-officials?

A. Oh, I think probably we discussed it.

Q. Did you come to any conclusions on it?

A. Not that I can remember.

Q. I mean as corporate manager?

A. No.

Q. Did you at any time come to the conclusion that under the status of the law as it existed, after the Supreme Court's decision on the Wagner Act, that the Works Council would not be considered a lawful organization?

A. May I ask the gentleman to read that.

Mr. Lamfrom: Yes, read the question.

(The question was read.)

A. Yes, I think I did.

Q. (By Mr. Lamfrom) Did you consider—strike that out, please.

Did you come to the conclusion that if the Wisconsin Labor Relations Act became a law, that the status of the Works Council would be in serious jeopardy?

2102 A. Yes, I think I did.

Q. Were you aware of the fact that under the provisions of the Wisconsin Labor Relations Act—

Mr. Lamfrom: Will you real that question, please.

(The question was read.)

Mr. Lamfrom: Strike that out.

Q. (By Mr. Lamfrom) Were you familiar with the fact that the socalled Severson Bill contained a clause in it that in effect would outlaw, under the laws of the State of Wisconsin, the Works Council?

A. I read the bill but I can't tell you just when.

Q. But were you aware of the fact—

A. I was aware of that fact, yes.

Q. Now, did that fact lead you to any conclusion as vice president and works manager, as to what, if anything, the company should do with reference to participating in the Works Council?

A. No, I did not because I knew that we didn't have any business to participate in any formation regarding that.

Q. Well, did you come to the conclusion sooner or later or at or around April 12th, that the Works Council as it was then conducted, would have to be abandoned?

A. Yes, I did.

Q. Can you state about what time you came to that conclusion?

2103 A. No, I cannot.

Q. When did you first become aware of the fact that there was a movement on among the employees of the Falk Corporation to form this socalled Independent Union?

A. Well, I think the first discussion that I can recall now was the discussion that was had under the hospital, which I had with the boys down there.

Q. In other words, did you know anything about the formation or attempted formation of an independent union before you were called down to the hospital?

A. It does not register definitely with me at all now, except that meeting.

Now, I may have known something about it before, but if I did, I don't recall it.

Q. Well, did you do anything about it, do anything with reference to it, did you help in any manner or in any way?

A. No.

Q. Excuse me, let me finish. Did you desire to effect such an organization?

A. Not that I know of.

Q. Well, you would know if you did?

A. Well, if I did anything it probably would have registered.

Q. Are you aware now of having done anything that would help those who were attempting to create such an or-
2104 ganization?

A. No.

Q. You see if I understand correctly, that your memory now is that the first knowledge, the first time the movement for an independent organization was called to your attention was when you were under the hospital?

A. Right.

Q. That was about—

A. According to the testimony here it was April 12th.

Q. Yes. You remember very well going to the hospital that day?

A. I remember that, yes, I do.

Q. Who asked you to come to the hospital?

A. That I don't recall.

Q. Well, do you recall whether it was anyone of management?

A. No, I don't.

Q. You don't recall that?

A. No.

Q. All you remember is you were asked to come there?

A. Somebody met me in the office and told me the boys wanted to see me over there, I don't know who that was.

Q. When you went over in response to the request, did you know what kind of meeting was taking place?

A. No.

Q. Had anybody informed you theretofore there was
2105 going to be a meeting?

A. No.

Q. Of the men?

A. No.

Q. Well, you went over there.

A. I did.

Q. And you met some of the employees of the company?

A. I did.

Q. About how many?

A. I haven't any idea, there were quite a few.

Q. Can you estimate the number, 15 or 20?

A. 15 or 20, I should say. It was a long table, they sat on both sides of the long table; it was quite a long table, and I should say from here to Mr. Rissman.

Q. Was any application made to you as works manager for permission to use the hospital for this meeting?

A. I don't think so, I don't remember that.

2106 Q. Did you think you would remember it if any such request for permission had been made of you personally?

A. Well, I might. If somebody came and asked me that when I was talking to somebody else, I might have said "Yes, go ahead", without giving much thought to it, and it did not register. I have no recollection of having done it.

Q. Well, you got to the meeting.

A. I got to the meeting, yes, sir.

Q. State what occurred.

A. Well, as I recall it, substantially I was asked to explain the Wagner law. I did the best I could with it, informed the fellows that I was not a lawyer, and that I could give only such information as I had gathered in discussions and reading articles and so forth, and I think the conversation from there went into the question of what would happen to the business if a group joined one labor organization and had to do business with other companies who had different labor organizations in their plants, and I said it didn't seem to me that it would make very much difference one way or the other to me whether they joined the C. I. O. or the A. F. of L. or any other organization, that chances for that sort of difficulty would be just as great one way as the other.

And as I recall, I cited an incident of the Allis-Chalmers trucks down here at the Exposition a day or so
2107 or two days before, I don't recall now, where the C. I. O. boys came down and the A. F. of L. Fellows would not take the stuff off the trucks:

As I recall, I said it didn't seem to make very much difference to us one way or the other, if it came to that sort of situation we would probably have to cross that bridge when we got to it anyway.

Q. Now, I assume that the first information you had with reference to this meeting was when you attended it, actually attended and the boys asked you the questions which they did and you answered them, were you then convinced that the company had reached a period of in its labor relations with its employees in which the company should do something?

A. I don't know just what you mean, we should do something.

Q. Well, there was something indicated to you by the questions of these men there as to what the purpose of this meeting was.

A. Yes.

Q. And I presume that you got from them that they wanted to know whether pursuant to the law as it stood at that time, they could form an organization of their own.

A. Well, I rather deduced that they were looking for information to form their judgment on what to do about it, because it seemed to me that they were somewhat con-
2108 cerned about the amount of business that the plant might get if they did one thing or the other, and I imagine that they would be interested in that, because after all it is their party just as well as ours.

Q. Well, did you leave that meeting with the idea that you were going to meet with the men again?

A. No, I don't think I did.

Q. You did meet with the men again?

A. Not as a group like that, that I can recall.

Q. When did you next meet with any of the men with respect to the question of your employment relations?

A. Well, I think the day those three fellows came into my office and asked me about a lawyer.

Q. That was the next meeting?

A. That I can remember, yes.

Q. You have testified in the examination by Mr. Rissman as to what that conversation was.

A. I think I did.

Q. Now, outside of the meeting at the hospital, and the meeting in your office at the time the men asked—the committee asked you about a lawyer, did you have any other meetings with any employees with reference to any labor organization?

A. You mean later on?

Q. Yes.

2109 A. Yes.

Q. Well, as I recall it that was the first meeting then with the Independent Union, but the date I have not in my mind.

Q. April 23rd was that?

A. I haven't the slightest idea.

Q. What was that meeting, what took place?

A. Well, they came in and asked for the increase which I think all of them understood, the increase that had been discussed at the old Works Council meeting, the last Works Council meeting, and they understood that was to go out with the Works Council and that any new negotiations for increases would have to be made with the existing bargaining group.

They came in and asked again for a raise, and asked for the reinstatement of those three fellows that we had laid off. That was the first meeting I had with those fellows.

Q. Do you remember whether or not that was toward the end of April?

A. Well, it must have been toward the end of April because it came after the meeting at the hospital, quite some time, and after they had received recognition; so therefore it must have been toward the latter part of April.

Q. Now, at that meeting of April 26th—it was April 26th that occurred, the testimony shows here—did you agree to advance the date of the increase in the wages?

2110 A. Not at that meeting, no.

Q. You were asked to do so?

A. I don't think at that meeting, somebody asked me that at the first meeting under the hospital.

Q. Let's get back to that. I may have gotten it a little confused in my mind.

I want you to state all the conversation that you had at that meeting back under the hospital.

A. Well, there was a further conversation about this question of advancing the date. Someone asked me if we would

be willing to advance the date from the first of June, as originally intended before the Works Council went out—away before,—and then I agreed to that.

I said "As far as I am concerned, if it will make you feel any better, I will do that."

Q. Did anyone at that meeting state that if you would advance the date of the increase that it would undoubtedly keep the C. I. O. out of—or words to that effect?

A. I don't recall that statement having been made.

Q. What was the reason that you agreed to advance the effective date of the increase?

A. Well, simply because I thought it was a fairly reasonable request, and it was made in good faith and I was willing to show our good faith and go along to that extent.

Q. Now, going to the meeting of April 26th—that
2111 was really the meeting between you and the committee of the Independent Union.

A. That was with their board of directors as I recall.

Q. Board of directors of the Independent Union.

A. Yes, sir.

Q. They came in to make some request of you?

A. Yes, sir.

Q. And one of the requests was the reinstatement of three men.

A. That is right.

Q. Do you remember who those three men were?

A. Yes, two inspectors and a welder.

Q. What was the reason for their discharge if you know?

A. Well, at the time, that was Saturday morning when there was a great deal of agitation going on in the shop and we had a couple of fellows come to us and say that these men threatened them and coerced them into signing the C. I. O. cards and made an affidavit to that, and then we let those fellows go.

Q. Were you shown the affidavits?

A. Yes, sir.

Q. Were you satisfied in your own mind that these men had been threatened by advocates of the C. I. O. in your plant?

A. They were sworn affidavits, and I did not think the fellows would misrepresent to that extent.

2112 Q. And on that basis you discharged these men.

A. Yes, sir.

Q. You yourself did that?

A. No, I did not.
Q. Or you ordered it to be done.
A. I did.
Q. Was this matter of the discharge of these men taken up with Mr. Clark of the Labor Relations Board?
A. Yes, Mr. Clark was immediately notified of the condition and supplied with the affidavits.
Q. Do you remember the conference had with Mr. Clark in his office, or rather the office of the National Labor Relations Board here in Milwaukee at which I was present?
A. I do.
Q. Did you or did you not make any statement to Mr. Clark with reference to the reinstatement of these three men?
A. As I recall that meeting Mr. Clark suggested it might be a good thing to take them back, and I think I told Mr. Clark that I would consider taking two back but I wasn't so sure about the third one, referring to Douglas, he is a welder, as there was one that I did not want to take back.
Q. Did you do anything about taking the men back until request was made on you by the directors of the Independent Union to take them back?
A. No, I did not.
2113 Q. Why not?
A. Well, I was not very anxious to take them back.
Q. Why did you accede to the request of the directors of the Independent Union to take them back?
A. Well, because I figured if those fellows wanted the boys back they were probably sincere about it, and if they were willing to forget the incident, why, I was.
Q. Did you want to take them back?
A. Not specially.
Q. Did you know whether or not they were members of the Independent Union at the time they requested you to take them back, the request to take them back was made by the directors?
A. No.
Q. Do you know today whether they are members of the Independent Union?
A. No, I do not.
Q. Would that make any difference to you?
A. No, sir.
Q. Do you remember whether at this conference with Mr. Clark, the matter of Kinch.—let's call it in re: Kinch, was discussed?

Mr. Rissman: Which Clark?

Q. (By Mr. Lamfrom.) Mr. Clark of the Labor Relations Board.

A. I don't recall that at all, Mr. Lamfrom.

2114 Q. Do you remember whether or not the matter of the Works Council was discussed with Mr. Clark?

A. Yes, it was.

Q. Do you remember what the substance of that conversation was?

A. I remember only furnishing one of the copies of our booklet to Mr. Clark, and it was either in a letter or a conversation that I got into afterwards, where he seemed to feel that the Council was pretty well set up.

That was the substance of what I remember there.

Q. Do you remember that later on I told you that I had a further—I had further discussed the question of these men, the Kinch matter and the Works Council with Mr. Clark and with Mr. Rissman?

A. Yes, I remember that.

Q. And did I convey to you what the substance of that meeting was?

A. I don't recall that now.

Q. You don't recall what it was.

A. No.

Q. Well, anyway, whatever transpired as a result of the meetings with Mr. Clark and later, on my meeting with Mr. Rissman and Mr. Clark, and a later meeting for the purpose of discussing the Works Council, nothing was done by the company with reference to the Kinch matter or the re-
2115 instatement of these men or anything respecting the Works Council.

A. No, not that I recall.

Q. Now, in addition to the reinstatement of these three men at the request of the directors of the Independent Union, was any matter discussed?

A. This wage matter.

Q. Yes, and what was the decision.

A. Well, we agreed to reinstate that wage agreement substantially as we had made it originally to the Works Council, with some few exceptions I think.

Q. You represented management in this meeting of April 26th?

A. I did.

Q. Was anybody present besides you from the management?

A. I don't remember that.

Q. How long did the meeting take?

A. Oh, I don't think I was down there for more than ten or fifteen minutes.

Q. In substance is that—is this what took place: The three directors came in, or were there more than three directors? Or how many?

A. There was quite a group, I don't know how many, I would say eight or ten, something like that.

Q. They made these requests upon you in writing?

A. They had a slip of paper there.

Q. Did they read it?

2116 A. Yes, they did.

Q. Or state them verbally.

A. No, they read from it.

Q. Had you had any information that this group was coming to see you before you received the request?

A. I don't remember whether they had asked me for an appointment or not, I don't recall.

Q. Did you make an appointment with them?

A. I don't recall that.

Q. In acceding to these requests, did you have any particular purpose in mind?

A. In acceding to them?

Q. Yes.

A. No.

Q. Did you think they were reasonable requests?

A. Yes, I did.

Q. Did you think that the requests were granted, or the requests were calculated to help establish friendly relations between the company and its employees?

A. Yes.

Q. Now, Mr. Falk, during the history of the Falk Corporation from its beginning, as you know it, up to date, have you had any strikes or lockouts, or walkouts, or labor disturbances?

A. The only one we ever had was in 1906.

2117 Q. And that was in a molders' strike.

A. That is right.

Q. Which took place at that time, and if I recollect the time, as I recollect that event here in Milwaukee, the strike

as far as the Falk Corporation was concerned was a sympathetic strike.

A. Well, that is what I have been told; I was not in on the negotiations at the time, because I came back from school in the fall of that year, and that happened in the early part of the year, May; so I was not in on that, although I have been told that was substantially what the reason was.

Q. How long did that strike last?

A. Well, that went on for pretty near two years; I don't know that it really ever was officially called off, I don't know.

Q. Now, outside of that particular strike which naturally impeded production in the Falk Corporation, was there ever any impeding of production in the Falk Corporation to your knowledge by reason of any strike or walkout or lockout?

A. No, sir.

Q. After the—

Trial Examiner Batten: I don't suppose you are referring to the testimony of Mr. Green here in this hearing, that this controversy between the two unions lowered the production in the plant?

2118 Mr. Lamfrom: I am referring now to walkouts, strikes and lockouts. I expect to get to that point in a moment.

Trial Examiner Batten: I say, I was wondering whether youyou included in this, the definition of those terms.

Mr. Lamfrom: No, I am now confining my question to what is known as strikes, walkouts or lockouts.

The Witness: That was what I was confining my answer to.

Q. (By Mr. Lamfrom) Yes. So far as you know there hasn't been any.

A. No.

Q. Or any one of those labor manifestations except the molders strike in 1907.

A. That is right.

Q. Now, this agitation which took place in the plant to which several witnesses have testified, agitation for the C.I.O., the agitation for the Independent Union, impaired or impeded to some extent as I understand, the production of the Falk Corporation, did it not?

A. Bound to I should think.

Q. Now, aside from the impeding of production of the Falk Corporation resulting from that kind of agitation, to your knowledge has there ever been any impairment or im-

peding of production of the Falk Corporation due to any labor trouble or disturbances of any kind?

2119 A. No.

Q. Did the impeding of production of the Falk Corporation at the time of the agitation recently in April slow up the shipment of goods of the Falk Corporation into interstate commerce?

A. Mr. Lamfrom, that is a rather difficult question to give a very positive answer to in a business of the type of ours. That Saturday morning when the difficulty arose it was very apparent that nobody was doing any work, that was the reason why we said we would close the plant at noon after we let those three men go.

We cannot measure our production in so many tractors a day or so many of this a day or that a day; we don't do very much of that type of work, so that unless you are familiar with it and right in the factory where you feel it, it is pretty hard to pin your information down so that it would be—

Q. What is your best judgment from your knowledge of the facts, of the situations as they existed at that time, as to whether or not it slowed—as to whether or not the slowing up of production in any material way affected the shipment of your goods out from Milwaukee to other points in the nation?

A. I think it very reasonable to say that when you get a group of men in the frame of mind that they were in
2120 there for a time, that their production is away off; I don't think there is any question about that.

Trial Examiner Batten: Well, that does not answer the question.

The Witness: Well, if it slows up production, Mr. Batten, it would undoubtedly slow up the shipments.

Q. Trial Examiner Batten: Well, I think that answers the question.

Q. (By Mr. Lamfrom) What effect would you say as to whether or not the flow in of materials which the Falk Corporation uses in its business or did use at that time was slowed up or interfered with by reason of the agitation and the slowing down of production?

A. I wouldn't say it would affect that very much.

Q. For how long a time would you say the outflow of your manufactured products was interfered with or slowed down by reason of the agitation?

A. Well, it was going on in pretty good shape there for a couple of weeks as I recall it.

Q. In other words, it would be your judgment that the only effect upon the shipment of goods out of the plant to other points in the nation was interfered with for maybe a period of two weeks?

A. I would say that is about right.

Q. And to what extent would you say shipments were 2121 interfered with, I mean considering shipments of normal, of 100 per cent?

A. I don't think I could answer that question.

Q. But you are rather certain that for only a period of two weeks this interference took place?

A. I think so, I think that is substantially correct.

Q. You are rather certain, are you not, that the inflow of goods or materials in interstate commerce from the parties from whom you purchased your materials was not interfered with at all.

A. I would say that is right.

Mr. Lamfrom: I see it is 5 o'clock.

Trial Examiner Batten: Well, do you want to finish with Mr. Falk?

Mr. Lamfrom: I have an engagement at 5:30 tonight that I would like to be able to keep.

Trial Examiner Batten: There is no reason I had—

Mr. Lamfrom: I am perfectly agreeable to go on.

Trial Examiner Batten: Don't put this in the record.

(Discussion outside the record.)

Trial Examiner Batten: All right, 9 o'clock tomorrow morning.

(Whereupon, at 5 o'clock P. M. August 24th, 1937, the hearing was adjourned to 9 o'clock A. M. August 25th, 1937.)

2125 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
(Caption—XIIC57 and XIIR85)

Room 409, Milwaukee County Court House,
Milwaukee, Wisconsin,
Wednesday, August 25, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:00 o'clock a. m.

Before:

James C. Batten, Trial Examiner.

Appearances:

Robert S. Rissman, and

S. G. Lippman, Attorneys on behalf of the National Labor Relations Board.

A. G. Goldberg, 511 Warner Building, Milwaukee, Wisconsin, appearing for International Union of Operating Engineers, Local 311.

2126 Giles F. Clark, of Alexander, Burke & Clark, 110 East Wisconsin, Milwaukee, Wisconsin, appearing for the Independent Union of Falk Employees.

Lamfrom, Tighe, Engelhard & Peck, by Leon B. Lamfrom, and

A. J. Engelhard, appearing for The Falk Corporation.

2127 Proceedings.

Mr. Lamfrom: Mr. Batten, I am handing you now the data you asked for yesterday from The Falk Corporation. The first data is contained in two sheets, Nos. 1 and 2, both dated August 24, 1937, and headed "Foremen and Assistant Foremen on Hourly Wage Payroll as of 4-23-37, 5-5-37, and 6-15-37." It consists of two sheets.

Do you desire to have it marked as one exhibit? I don't know what number that is, I have long since forgotten.

Mr. Rissman: The next Respondent's Exhibit number is 3.

Mr. Lamfrom: Respondent's Exhibit 8.

The next sheet is a list of the ex-Works Council members, who attended the meeting held on April 8th, 1937. The sheet is dated August 24, 1937, setting forth that no deduction was made from the pay of these men for the time spent at this meeting, in accordance with the provisions of the Works Council's articles and by-laws. All right?

Mr. Rissman: All right, Mr. Lamfrom.

Mr. Lamfrom: That will be Respondent's Exhibit 9.

Do you desire to see these now?

Trial Examiner Batten: If there is no objection, they will be received.

Mr. Rissman: No objection.

2128 (Thereupon, the documents above referred to, marked RESPONDENT'S EXHIBITS NOS. 8 and 9, were received in evidence.)

Mr. Lamfrom: I have the power house men here. If you desire to wait until Mr. Goldberg gets here, I will go on with the examination of Mr. Falk, although I would like to put these witnesses on the stand at as early a time as possible, to get them back to the plant.

Mr. Falk, will you resume?

HAROLD S. FALK, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed and testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Lamfrom.) The last question, as I have it from the transcript furnished us by the unofficial reporter—the official reporter, the one that is here, not having the proceedings of last night—is:

"Q. And you are rather certain, are you not, that the inflow of goods or materials in interstate commerce from the parties from whom you purchase your materials is not interfered with at all?"

"A. I would say that is right."

"Trial Examiner Batten: Do you want to finish with Mr. Falk tonight?" and so forth.

2129 Now, Mr. Falk, has the production of The Falk Corporation been hampered or interfered with since the days in April, which has been brought out in the testimony?

A. No.

Q. Is the production at the present time normal?
A. Yes.
Q. Are you working on shifts at the present time?
A. Yes.
Q. How many shifts?
A. In some departments two, and in some departments three.
Q. And there is no interruption of the inflow of raw materials from other States, due to any conditions in the plant respecting labor matters?
A. No.
Q. Is there any interruption in the outflow of your product to other States, due to any interruption or interference caused by labor matters?
A. No.
Q. How long has this condition of normality, as we shall call it, been in existence since April?
A. Well, right straight along, with perhaps the exception of that period that was testified to yesterday.
Q. That period that you testified to yesterday?
A. Yes.
Q. Are you anticipating any interruption in the pro-
2130 duction which would affect the outflow or inflow of materials in your plant?
A. No.
Trial Examiner Batten: I presume if these two organizations got to arguing again, you might anticipate it, might you not?
The Witness: Might, if they got to arguing, yes.
Mr. Lamfrom: Of course, that might happen at any time, to anybody, but we are talking now about the present conditions, if they were projected into the future.
Q. (By Mr. Lamfrom.) In your examination by Mr. Rissman, at the beginning of this hearing, Mr. Rissman asked you some questions with reference to your labor policy, referring to the company's labor policy, and he had referred to the written statement of your labor policy which you published in the plant, I think in June, based partly upon the pronouncement of the President of the United States in the automobile matter in 1934, and, in the course of that examination, he asked you this question:
"Q. Is that policy different, Mr. Falk, in any respect, from the policy previously pursued up to that time?"
He referred there in that question to the policy of the com-

pany immediately preceding the troubles which have been indicated in this case, and thereafter; and you answered:

2131 "A. Yes, I think it is."

And then he asked you this question that follows: "Q. In what respect?"

and the record shows that you did not answer that question.

Now, will you answer the question now, in what respect the policy is different from the policy pursued by the company up to that time? Do you understand my question?

A. I think so.

Mr. Rissman: It is my question.

Mr. Lamfrom: No, it is my question now, I have taken it from you.

The Witness: A. Previous to that time, we, of course, were not bound by any law, and as a result we used our own judgment in matters of what we believed to be right and wrong.

Q. (By Trial Examiner Batten.) Prior to what time?

A. Prior to the enactment of the law, and this particular time that he spoke of.

Q. That is what I am interested in. Prior to what time?

A. The enactment of the Wagner law, in 1936.

Q. (By Mr. Lamfrom.) To put it this way, was your statement of policy, labor policy, which you published in June, a result of your feeling and thought as to your obligations and duties under the law of the United States, as it then stood?

2132 A. Yes.

Q. And in what respect had the law of the United States, as it then stood, changed your conception of your labor policy?

A. Well, in relation to the rights of the men to bargain collectively for wages, hours, and working conditions, I think that would cover it.

Q. Did it undergo any change as to the question of your obligation to bargain collectively with the men, through representatives of their own choosing?

A. Yes. We wanted to follow the law.

Q. Now, Mr. Falk, reference has been made to the labor policy of the company, as exemplified in your pronouncements, speeches or indications of other kinds, prior to the period of the legislation known as the Wagner Act, and I hand you here a copy of a letter written by you September 8, 1933, to Mr. F. A. Canfield, United States Department of Labor at

ilwaukee, and ask you to peruse that copy, and refresh your emory as to its contents.

A. That letter was the result of an interview with Mr. nfield at his request, I think in the Hotel Wisconsin, after e discharge of Aristo. I had reviewed it with him in his tel room, and he asked me if I would reduce it to writing d present it to him, which I did.

Q. Now, in the letter which you wrote to Mr. Can-
33 field, under the circumstances as detailed by you, did you state the labor policy of The Falk Corporation as was then practiced?

A. Yes, I think that second to the last paragraph would ver that pretty definitely.

Q. Now, will you read the second last paragraph in that tter?

A. (Reading):

"I explained to you our attitude towards men who are af-iated with Union organizations. While we run an open op, we do not discriminate against men who belong to the nion, unless they prove to be trouble-makers, in which event e would discharge Union or Non-Union alike. There have en a number of men in our employ at various times who longed to the Unions and these men have enjoyed the same ivileges as any of the others. As a further indication of ir attitude, it may be of interest to note that for many ars we have employed a Union mason in our furnace and ilding maintenance work, when Non-Union men were read-available. In fact, we have in our employ a capable mason ho does our concrete work who could, at any time, be used mason work. A similar situation exists with our plumbing maintenance and repairs. We have for many years
34 used the men from a Union contractor. There are also many Non-Union plumbers available here."

Q. Now, referring to the contents of the letter, other than ur statement of policy, and to the Aristo matter, and re-shing your mind from the letter, what have you to say as the reasons that Aristo was discharged? Inasmuch as that in that letter, and as it refreshes your memory, I will deal h that subject at the same time.

Trial Examiner Batten: I presume you are going to make s letter an exhibit, are you not?

Mr. Lamfrom: Yes, but I just want the testimony of the ness as to the position of the company on the discharge of sto.

Q. (By Mr. Lamfrom.) Is his name Aristo?

A. Aristo.

I explained to Mr. Canfield at the time—

Q. (By Trial Examiner Batten.) The question is not what you explained to Mr. Canfield. The question is, why was he discharged.

Q. (By Mr. Lamfrom.) Yes. What do the paragraphs of the letter, the contents of the letter, show, refreshing your memory therefrom, to be the reasons for Aristo's discharge?

A. He was discharged for violating shop rules, and for leaving his place of work in order to get a drink of water at the power house, which was some 400 feet distant from
2135 the place that he worked at, and it was explained to him that if all of the men ran to the power house, we would have four or five hundred men walking back and forth from the plant all day long.

And then he got into an argument with the foreman, and there was insubordination there, and in addition to that, he used to come over in the office and peruse the waste paper basket every morning, representing to the janitor over in the office that such permission had been given him by me. He said he was looking for postage stamps, but I was pretty well satisfied in my mind that he was looking for such information as might be available through the waste paper basket.

Q. Information on what?

A. On anything that pertained to the company, or company affairs.

Q. Were all these reasons which you gave for the discharge of Aristo a matter of an accumulation that existed at the time he went to get the drink of water the 400 yards or 400 feet to the power house?

A. That's right.

Q. Did you approve of that discharge?

A. I did.

Q. You, in fact, discharged him, didn't you?

A. No, I didn't. I was with the foreman when he
2136 discharged him.

Q. And the reasons you have given are the reasons for his discharge?

A. Yes.

Q. And that is back in 1933?

A. Yes, September 8th.

Mr. Lamfrom: Mr. Batten, I will now offer this as an exhibit marked Respondent's Exhibit No. 10.

Mr. Rissman: I will object to the introduction of this document, if the Examiner please. It is self-serving.

We do not know the purpose for which it was written to the Department of Labor. We have no way of determining the basis on which the statements in the letter are made, and it serves no purpose in this hearing, tending to prove or disprove the issues in the case.

Mr. Lamfrom: I don't know what better evidence could be introduced at this time to show the policy of the company towards its employees and the Union questions involved; and it also is, in effect, a memorandum refreshing Mr. Falk's recollection as to the causes for the discharge of Aristo.

Trial Examiner Batten: Of course, Aristo's discharge is not an issue in the case.

Mr. Lamfrom: Except it is a part of the case.

Trial Examiner Batten: However, it was brought up here in the evidence, when Mr. Aristo was here, as to why
2137 he was discharged. It will be received for whatever value it has.

Mr. Rissman: I submit, further, that this, if it was a statement of the labor policy of the company, was in the nature of an explanation of the policy to the government representative.

Trial Examiner Batten: Well, I think if I read the letter in the light of all the evidence that is here, I can determine what relation it may have to the history of labor relations in the plant.

(Thereupon, the document above referred to, marked RESPONDENT'S EXHIBIT 10, was received in evidence.)

Q. (By Mr. Lamfrom.) What was the occasion for stating in this letter to Mr. Canfield the labor policy of the company?

A. Well, he and I had a discussion in the hotel room reviewing the whole situation, and I told him substantially that, and he asked me to put it in writing, therefore, I put in writing just a review of our conversation in the hotel room.

Q. When you say "the whole situation", what situation are you talking about?

A. The whole situation relating to Aristo, that was what he was after.

2138 That is, the question of your labor policy arose with reference to the Aristo matter?

A. It must have, because I tried to report to Mr. Canfield the conversation we had there.

Q. Was there any complaint which you recall Mr. Canfield

made about your general labor policy at that time, or was the matter confined to Aristo?

Trial Examiner Batten: Mr. Lamfrom, as far as the Examiner is concerned, I would prefer not to go into the conversation had with this man. It is apparently all covered in the letter. I do not presume Mr. Canfield is available?

Mr. Lanfrom: No, I don't know where he is.

Trial Examiner Batten: I mean, I would prefer not to go into other matters in connection with that.

Mr. Lamfrom: I see your idea.

Trial Examiner Batten: Because, as Mr. Falk says, the conversation or discussion is practically entirely covered in the letter. The thing is, I would hate to have develop here matters of conversation, and so forth, between these two gentlemen, when Mr. Canfield is not available—

Mr. Lamfrom: Yes.

Trial Examiner Batten: (Continuing.) —in any way with respect to it.

Mr. Lamfrom: The only point I was directing my 2139 question to was the idea that the government was not taking any position that the Falk labor policy was not the right kind of labor policy, but that this matter arose purely out of the discharge of Aristo.

Trial Examiner Batten: I assume the labor policy of The Falk Corporation was not in issue, that undoubtedly it arose incidental to Mr. Aristo's discharge.

Mr. Lamfrom: That is the idea.

Trial Examiner Batten: I assume that was it.

Mr. Lamfrom: Now, if you would step aside a moment, Mr. Goldberg is here, and we can put the power house employees on the stand.

(Witness withdrawn.)

CHARLES E. SCHNADER, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Lamfrom.) What is your name?
A. Charles E. Schnader.
Q. You are an engineer at The Falk Corporation?
A. Yes.
Q. And how long have you been in such employment?

A. With The Falk Corporation four years.
Q. And how old a man are you?
A. Sixty-seven.
2140 Q. Are you a licensed engineer?
A. Yes, sir.
Q. Are you a member of any labor organization?
A. Yes, sir.
Q. What organization do you belong to?
A. The American Federation of Labor.
Q. How long have you been a member of the American Federation of Labor?
A. Well, off and on, for the last forty years.
Q. Take the last "off", and the last "on", when did that happen?
A. Last March.
Q. You remember that during the month of March, there was some organization work by Mr. Kingsland and others of the Engineers Union among the men in the power house at The Falk Corporation?
A. Yes, sir.
Q. Were there some union meetings that you attended?
A. One.
Q. Was that in March or in April?
A. It was either March or April.
Q. And at that time you rejoined?
A. Yes, sir.
Q. And you have been a member of it ever since?
A. Yes, sir.
2141 Q. Now, let me ask you, have you ever been led to make a choice of whether or not you should belong to a labor organization by anything that Mr. Harold Falk has said to you at any time during your employment by The Falk Corporation?
A. No, sir.
Q. Have you been influenced in your determination or choice whether or not to belong to a labor organization by anything Mr. Falk has written to you, or which you have seen, respecting whether or not you desire to belong to a labor organization?
A. I was already a member when this correspondence was distributed to the employees of the power house.
Q. Do you remember that letter?
A. Yes, sir.

Q. I hand you Board's Exhibit No. 18, which is a letter dated April 16, 1937, to the employees of the power house, and ask you whether that is the letter that you just referred to?

A. That is the letter.

Q. Did you understand after you read that letter that the purpose of that was to influence you in the matter of your membership in the union?

Mr. Rissman: I object to the question, if the Examiner please. The letter is in evidence. The Board and the Examiner will be able to rule as to the intent or effect such
2142 a letter would have upon the workers.

Mr. Lamfrom: I think the point is here, he can state what his understanding was.

Trial Examiner Batten: I don't think, under the conditions, I will permit him to answer the question. The letter is in evidence.

The other facts surrounding, what transpired, I am perfectly willing that evidence will be submitted to show what transpired after the letter, if anything, was sent. But as to what he thinks Mr. Falk's purpose was, I don't think he is qualified in any way to say what somebody else had in their mind when they wrote the letter. For that reason, I will sustain the objection.

I don't think this witness or any other witness is qualified to pass upon somebody else's purpose.

Q. (By Mr. Lamfrom.) What was the effect of this letter upon you with reference to your continuing to be a member of that organization, or to leave it?

A. It had no effect on me, because I was already a member.

Q. As a matter of fact, it didn't cause you to do one thing or the other, did it?

A. No, sir.

Q. You have remained a member ever since?

A. Yes, sir.

Q. Now, are you down at the power house during the
2143 working hours, at the time many of the other men are working?

A. My shift is from 8:00 in the morning until 4:00 in the afternoon, six days a week.

Q. And how many men are on the same shift with you?

A. Well, that varies. As a rule, there are seven, I believe. Sundays there is only two of us there; according to the day in the week; when the men get their regular offs Saturday and Sunday, there is less men there than any other time.

Q. Do you know all the men in the power house?
A. Yes, sir.
Q. Pretty well acquainted with them?
A. Yes, sir.
Q. Generally speaking, they are good friends, is that a fact?
A. Yes.
Q. Do you gentlemen in the power house talk together with reference to matters that arise concerning your labor relations with the company?
A. As a rule, I don't discuss the labor situation with anybody, because I believe that is a question that each one should decide for themselves. I don't consider that it is anybody's business what I do in the matter, and I don't want to interfere in anybody else's.
Q. Now then, did Mr. Harold Falk talk with you re-
2144 garding the Engineers Union proposal to enter into a contract?
A. He accosted me one morning, I think it was the day after Kingsland was there, and he asked me if I was a member of the union. I told him I was, and he asked me—he said, "Do you think you can get more from bargaining through a union than you can individually?" I told him I didn't know.
Q. Was there anything else said by him or you, I mean, regarding this subject?
A. No. I have known Mr. Falk for the last thirty years, and we have often talked, but I don't remember just what was said at that time. That was the sum and substance of the thing; he wanted to know if I was a member, and I told him I was, and he wanted to know if I thought I could gain anything by the bargaining of the agent.
Q. Did Mr. Falk say anything to you that you understood to mean that you should stop being a member in the organization?
A. No, he did not.
Mr. Lamfrom: Take the witness.

Cross-Examination.

Q. (By Mr. Rissman) After this letter was distributed among the power house employees, Mr. Schnader, do you know if any of them withdrew their membership from the A. F. of L. organization?
2145 A. I was told that five requested—sent in a letter requesting their membership be withdrawn.

Q. Do you know how many were members before the letter was sent or distributed?

A. I believe there was fourteen that signified their intentions by signing an application card.

Q. Do you know how many are members now, or have partaken in the activities of Local 311?

A. One, besides myself.

Q. (By Mr. Goldberg) When you said that there were fourteen that signed application cards, you mean there were fourteen in addition to yourself and this other man?

A. No, fourteen altogether.

Q. Fourteen all told?

A. Yes.

Q. Out of how many?

A. Well, I understand there were two or three engineers on the locomotive cranes, and I believe there were fourteen —that would be seventeen men altogether, and everybody signed, I understand, with the exception of three.

Q. You feel there should be a separate bargaining unit for your type of employees in the power house?

A. I do.

Q. And who do you want to represent you?

A. Why, I have already signified that by joining the 2146 American Federation of Labor.

Q. The Operating Engineers Union, Local 311?

A. That is, provided there is any union bargaining done.

Q. You want that group to represent you?

A. Yes. If there is no union bargaining, then it is up to myself individually.

Q. In the conference with Mr. Falk, was that at his office?

A. It was in the power house.

Q. You were alone with him when you were talking to him?

A. The electrician was there when he first spoke to me, but he stepped aside, so that nobody else heard the conversation except Mr. Falk and myself.

Q. Did he express to you the same sentiments, did he make the statement that he was opposed to labor organizations?

A. He did not.

Q. He did not make that statement?

A. No. He told me he was satisfied if I thought I could get any better service through union organization bargaining than I could individually.

Q. You made it known right away, that you were an A. F. of L. member of long standing, and intended to remain one, did you not?

A. Absolutely.
Mr. Goldberg: That's all.
Mr. Lamfrom: That's all.
47 The Witness: That is, that I had previously been a member, but had just rejoined.
Mr. Rissman: That's all.
Q. (By Mr. Goldberg) That your membership carried er forty years?
A. Yes. I have been an honorary member of the Machints Union since September 1916. When I was made superinndent, I was not allowed to carry a working card. I am also machinist, as well as an engineer, and I still hold that honary membership in the A. F. of L.
Should I go back to work as a machinist, that card is good r reinstatement.
Trial Examiner Batten: Did you receive one of these lets, Exhibit 18?
Mr. Lamfrom: I just passed it back again.
Q. (By Trial Examiner Batten) You know what I mean?
A. Yes.
Q. In which it said, "We do not favor unions"?
A. Yes.
Q. Let me ask you this: After the receipt of that letter, ould you feel as free to express your opinions and take an tive part in labor organization as you would in a plant where ou knew that the employer was in favor of a union; would ou feel as free to carry on your activities?
A. Well, I wouldn't say that I would feel as free to
48 discuss labor problems with men in a plant where it was not organized as I would if I was working in one that as organized, because I would know then that everybody ould be in accord with unionism; when they are not all embers, you don't know who you are talking to.
Q. What do you mean, you don't know who you are talking ?
A. You don't know whether your fellow-employee has the me opinion about organization that you have. I would not nt to try and influence anybody to do anything contrary their own best judgment. I always try and decide those ngs on their merits, and what they are going to do for , and then go ahead with it, and I believe everybody should ve that same privilege.
Mr. Lamfrom: Do you desire to ask any more questions?
Trial Examiner Batten: No.

Mr. Lamfrom: That's all.

Q. (By Mr. Goldberg) At least, you feel if there is to be anyone to bargain for you as an individual, you should have the right to vote for whom you want to bargain?

A. Absolutely.

Q. If there is going to be any election at all?

A. Absolutely.

Q. And a group of individuals doing the same type of work as you should be the only ones to be able to vote
2149 for the bargaining agent to represent that type of work?

A. Absolutely.

Mr. Goldberg. That's all.

Mr. Lamfrom: That's all.

Trial Examiner Batten: That's all.

(Witness excused.)

JOHN P. COADY, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Lamfrom) What is your name, sir?

A. John P. Coady.

Q. And what is your business, Mr. Coady?

A. Operating engineer.

Q. At The Falk Corporation?

A. At the Falk Corporation.

Q. How old a man are you?

A. Sixty-one.

Q. Are you a licensed engineer?

A. Yes, sir.

Q. How long have you been an employee of The Falk Corporation?

A. About sixteen years and five months.

Q. I suppose in that time, you have gotten to know Mr. Harold Falk, have you?

2150 A. I hope so.

Q. Are you a member of any labor organization?

A. No, sir,—I will withdraw that statement. I did join the Independent Order.

Q. You did join that?

A. Of Falk Employees.

Q. When did you join the Independent Union of Falk Employees, just approximately?
A. I think May.
Q. In May of this year?
A. I think so.
Q. Yes.
A. I can answer definitely in a moment.
Q. How did you happen to join? Well, go ahead, take your time.
A. Yes, the first month was May.
Q. Are you now a member of that organization?
A. I am.
Q. Have you been a member of any other labor organization?
A. I have not.
Q. Within the last year?
A. I have.
Q. Did you join the American Federation of Labor Engineers' Union?
A. I have not.
2151 Q. How did you happen to join the Independent Union?
A. Well, I felt that eventually it would come to some sort of an organization, and I felt that I preferred the Independent organization to the outside representation.
Q. For what reason?
A. I felt on account of working more directly with my fellow-men, and that they would understand our problems much better than outside representation.
Q. Have your relations with the Falk Corporation during your employment there been pleasant?
A. Very much so.
Q. Has Mr. Falk ever indicated to you whether or not he desired you to become a member of any labor organization or not to become a member of a labor organization?
A. He did not.
Q. Have you been influenced in your choice in joining the Independent Union by any member of The Falk Corporation? By that, I mean any management member.
A. I don't know of any influence, only my own view of the situation.
Q. Were you sought as a member by Mr. Kingsland or any other organizer of the American Federation Engineers Union?
A. I was visited by Mr. Santner.

Mr. Lamfrom: Mr. Santner. Mr. Kingsland, is he the secretary?

2152 Mr. Kingsland: No. He was organizer at that time.

Q. (By Mr. Lamfrom) Did you have a conversation with Mr. Santner?

A. I did.

Q. Did you or did you not state what your position was with reference to joining that organization?

A. Mr. Santner visited me at my home. May I tell this in my own way?

Q. Certainly.

A. Mr. Santner visited me in my home, and we talked a little while, and he stated the business that he had at hand, and I told him that I did not feel interested; and he wanted to know why, and I told him the treatment that I had always received from The Falk Corporation in my sixteen years or over of my employment had always been such that I felt that the organization could not benefit my position in any way whatever.

Q. (By Trial Examiner Batten) Do you think the Independent Union can benefit your position any?

A. Well, I felt that, as I said before, working there together, we could perhaps take our problems to each other in a more intimate manner.

Q. Do you think they can benefit you any?

A. May I answer that in my own way?

Q. You may answer this in any way.

2153 A. From the treatment that I have had from The Falk Corporation, I don't know that I could actually say that they could handle it.

Q. What did you join them for, then?

A. Well, because I thought, eventually, we would be unionized, and that you might as well come in, into the one you preferred, as to some other.

Q. What do you mean "eventually you would be unionized"?

A. Well, by the activities in the labor field today.

Q. (By Mr. Lamfrom) That is, you felt, if I understand your testimony, that if unionization was coming, you preferred to join the union that would be most agreeable to you?

A. That is my stand.

Mr. Lamfrom: Take the witness.

Cross-Examination.

Q. (By Mr. Rissman) You say in the sixteen and a half years you have worked at The Falk plant, they have always treated you properly?

A. Yes, sir.

Q. And you have been satisfied with the treatment you received?

A. I certainly have.

Q. In view of that feeling, you wouldn't do anything that would displease Mr. Falk, or the company, would you?

A. I don't know why I should.

2154 Q. Well, you wouldn't, would you?

A. Well, I don't know why I should do that. I have no reason within myself, that I know of.

Q. When did you join the Independent Union?

A. I think it was May.

Mr. Rissman: That's all.

Q. (By Mr. Goldberg) Did you know that fourteen of the men working in the power house, and also two working out in the yard, doing your type of work, out of the seventeen total employees, signed application cards in the International Union of Operating Engineers?

A. Did I? What time did you mean?

Q. At any time that you know of, that was the situation.

A. Well, I didn't know that.

Q. Do you know it now?

A. And I have not been convinced.

Q. When were you told that for the first time?

A. I think the first time I knew of it was when—about the time, I think, that Mr. Kingsland visited the office down there, and that is about the time I got the information.

Q. Who gave you that information?

A. That I couldn't say now.

Q. Did you talk to Mr. Phil Kingsland?

A. No.

2155 Q. Was it one of the men on the job?

A. Pardon?

Q. Was it one of the men on the job that told you that?

A. No. I think it came to me some way through Mr. Kingsland informing Mr. Falk that fourteen of them had signed up.

Q. And then did Mr. Falk tell you that?

A. I couldn't say who told me, it doesn't come to me at all right now who did tell me, I can't answer that question truthfully.

Q. About that time, did you talk to Mr. Falk concerning joining or refraining from joining the union?

A. Mr. Falk and I had a conversation, yes.

Q. Where did you have that conversation?

A. Over in the power house.

Q. And when was that?

A. Well, I can't just state exactly when that was, but it was just about the time—well, it was shortly after the visit of Mr. Kingsland.

Q. How do you know that Mr. Kingsland visited there?

A. Well, in the first place, we were told that he visited there, and that card he sent out for us to come down to the Eagles' Hall on that particular Sunday for a meeting.

Q. Was it before the notice was posted in the power house by Mr. Falk, stating the position of The Falk Corporation?

2156 Mr. Lamfrom: I think the last time you asked that question, I indicated there is no evidence that any notice was posted in the power house. These letters were mailed to all these men.

Mr. Goldberg: No, it wasn't mailed.

Trial Examiner Batten: It was delivered by messenger, as I recall.

Mr. Engelhard: It was not posted, however, in the power house.

Mr. Goldberg: Thank you. All right.

Q. (By Mr. Goldberg) Was it before the time that this letter or statement or policy of the company was delivered to you?

A. Yes.

Q. And what was the conversation, what was said by Mr. Falk, you can just repeat it.

A. To the best of my memory, Mr. Falk came in and told me that Mr. Kingsland had visited over there, and I think that was when I really had the information, now, that so many of the men had expressed their wish to join the American Federation of Labor, and he told me that we fellows in the power house could join any organization we pleased, that he would have nothing to say about it at all, that it was up to us. The only thing he wanted to know was, did we want

an organization, and if so, he would know how to deal,
157 or he would know then that he should deal with Mr. Kingsland, but at the present time he wasn't—that is, e hadn't the information that we in the power house wanted n organization, and therefore, he wanted us to tell the truth, nd if we did, it would be all right with him, and if we didn't, would be all right with him, but he didn't want to go out- de and bargain unless we wished him to do so; that it was ntirely up to us.

Q. Did you then tell Mr. Falk that you had not signed?

A. I did.

Q. And did Mr. Falk also ask you whether you thought ou could get more out of the corporation by joining the nion, or staying out of the union?

A. I don't think he asked me that question.

Q. Did he again make the statement, as he did in that tter, that he was against unions?

A. He never made that to me.

Mr. Lamfrom: Just a minute. The letter doesn't say that t all.

Trial Examiner Batten: It says he doesn't favor unions.

Mr. Lamfrom: No. It says he does not favor a union.

Mr. Goldberg: "A union"?

Mr. Lamfrom: Yes.

Q. (By Mr. Goldberg) Did he make that statement, that "I" or "Falk Corporation, do not favor a union?"

158 A. You mean orally, or in the letter?

Q. No, did he again make it in this conversation with ou?

A. He did not.

Q. Did you ever again have any other conversation with lr. Falk after that concerning joining or refraining from ining a union?

A. Not to my knowledge.

Q. You stated in your testimony, I guess Mr. Lamfrom uestioned you, that you felt that there was going to be or- nization there, and you had to get into one union or another, e organization or another, isn't that true?

A. I don't like that word "had".

Q. Well, how did you put it to Mr. Lamfrom?

A. I put it to him, I think, that eventually there would be organization; and I wanted to join the organization which preferred, that I thought would be to my interest and to liking.

Q. When you say "eventually" you felt there would be an organization, do you mean that, among other organizations, there would be the Operating Engineers in that plant, due to the fact that fourteen of your people had signed applications to that organization?

A. Well, that is a pretty hard question to answer.

Q. It is not so hard. Don't you have that in mind?

A. Read that question, please.

2159 Mr. Goldberg: Will the reporter read it?

(Question read by the reporter.)

Mr. Engelhard: I submit, it is rather difficult for any man to answer that question "yes" or "no".

Mr. Goldberg: I didn't ask him to answer it "yes" or "no".

Q. (By Mr. Goldberg) Answer it in your own way.

Trial Examiner Batten: I assume the question is this:

Q. (By Trial Examiner Batten) Whether you had in mind the fact that fourteen of your fellow-workers had already indicated a desire to belong to the Operating Engineers. Did that fact influence you in joining the Independent Association?

A. No, I think not.

Q. (By Mr. Goldberg) But that was one of the indications that eventually there was going to be organization in the plant, isn't that true?

A. Well, every other plant was organizing, and I felt that eventually it would come to our plant.

Q. You have been working with the engineers in the plant for a number of years?

A. I have.

Q. Had you discussed labor organizations with those men?

A. I couldn't say that I did.

Q. Have you never discussed the formation of a

2160 union at The Falk Corporation, either on the premises or off the premises, in all the time that you were employed at the company?

A. Well, there may have been some little talks, but I don't know just now whether I could collect those talks or not, because I didn't want to influence those men one way or the other, I thought that they should know what they wanted.

Q. Did any of them try to influence you?

A. They didn't that I know of.

Q. Hadn't there been any even loose discussion about

unions among the men, either on the premises or off the premises, within the last six months?

A. Of course, I just said I think I had general talks, but I don't think I could collect those talks now, to bring them out to you clearly.

Q. On how many occasions do you believe you had any type of discussion concerning the formation of a union, among you men at The Falk Corporation within the last six months?

A. I don't think that I ever really got into a discussion on the formation of a union in The Falk Corporation.

Q. Did you ever overhear any other men discussing the formation of a union?

A. No.

Q. In the last six months?

2161 A. I don't think I did, I think I had better answer that question that way, because of this reason: No one had approached me, and no one had ever informed me that the union was being formed.

Q. When was the first time Mr. Santner approached you?

A. May I ask when the Independent organization had the meeting, the Sunday afternoon at the North Ave Auditorium?

Mr. Lamfrom: That was April 18th.

The Witness: Perhaps a couple of weeks before that, something like that. I will not state that definitely, but to my recollection, it must have been somewhere just a little before that, that Santner visited me.

Q. (By Mr. Goldberg.) At your home?

A. At my home.

Q. Had he been out there on other occasions when you were not home, that was reported to you?

A. Not to my knowledge.

Q. Is that the only time you talked to Santner?

A. I talked to him in the afternoon, after the Independent meeting at the North Avenue Auditorium, he was on the street there, and I had a talk with him again.

Q. What was the nature of that conversation?

A. The nature of the conversation was something of this nature: That I stated, at my age, and the like of that, that I couldn't see where the union could do any better for

2162 me than my company was doing already. And he said something, if I remember correctly, about I should make a sacrifice, and I told him I thought I was getting too old to make a sacrifice, that I felt I should look out for myself, and

I told him that I had nothing against his organization personally, but I did not feel at the present time that I could be benefited by joining.

Q. Did you have in mind that Mr. Falk had issued that statement, in which he said that the company was not in favor of the union?

A. I don't think that had any influence on me, whatever.

Q. Did you call to the attention of the individuals at the Independent meeting that Mr. Falk had made that statement that he was against the union—not in favor of a union?

A. No.

Q. Did anyone make that statement?

A. That I cannot say.

Q. Was there any discussion concerning whether Mr. Falk had changed his policy with regard to not being in favor of a union, as it applied to your Independent Union?

A. I can't answer that question. I must say that I don't know. If I remember correctly, there was considerable confusion, and I cannot say what statements.

Q. Did you consider whether or not you were too old 2163 to join the Independent, with regard to gaining benefits, at your age?

A. Well, I don't know that benefits influenced, that is, actual benefits, I don't think at that time that that really influenced. As I said before, I felt if we had our own little organization, that it would be more intimate, and that we could bargain ourselves perhaps to some better advantage than from the outside. That was my opinion, I may be wrong, of course, but that was my opinion.

Q. Now then, most of your employees are not operating engineers, or engaged in the type of work that you do, is that true?

A. Pardon?

Q. Most of your employees are not operating engineers, nor are they engaged in the type of work that you perform?

A. No.

Q. Don't you think that your little group, massed together, could more effectively deal with the management concerning operating conditions than a group taking in office help, draftsmen, the mass of employees, among your group?

A. I still feel, as a group of employees in one plant, that we would be just as well off as if we were represented by outside representation.

Q. (By Trial Examiner Batten.) You are in favor, then, of an industrial union, is that it? A union which takes in all the employees of one plant, in one organization?

2164

A. That is, you mean in the one plant where I work?

Q. Yes.

A. I think I do.

Mr. Lamfrom: That is, he does not say he is in favor of an industrial union.

The Witness: No.

Mr. Lamfrom: He says he is in favor of a plant union.

Trial Examiner Batten: I say "industrial union"; in the sense that everybody accepts it, and that is, that all the employees in one plant should belong to one organization, whatever you call it.

Mr. Lamfrom: That is a plant industrial union.

Trial Examiner Batten: I say, that is commonly termed, as I understand it, as an industrial union; "industrial", meaning all of these employees in a particular plant, belonging to one organization, without any reference to any affiliation. I did not mean to imply that that would mean affiliation with them.

Mr. Lamfrom: No, I understand.

Q. (By Mr. Goldberg.) In reading Mr. Falk's letter, in which he says he was not in favor of a union, did you interpret that to mean that he was also against an Independent Union?

2165

A. Well, if I may tell you the truth—

Q. That is what we want.

A. (Continuing.) —I don't think what was in that letter influenced me one particle, one way or the other.

Trial Examiner Batten: That is not the question.

Mr. Goldberg: Just answer that. Read the question.

(Question read by the reporter.)

Mr. Engelhard: It seems to me that when we asked questions of that sort sometime ago, they were objected to, and objection sustained under the rule that the men could not interpret the letter.

Now, I object to the question as being improper, asking this man's opinion.

Trial Examiner Batten: I don't think the remarks are called for with which you opened your objection. If you would make your objection first, and give the Examiner an opportunity to make a ruling, without implying here that the

Mr. Engelhard: No, I didn't mean that, your Honor.

Trial Examiner Batten: I don't think those remarks are called for.

Mr. Engelhard: My remarks are not directed towards the Examiner. They are directed towards counsel.

Trial Examiner Batten: If you object first, Mr. Engelhard, I will be glad to rule on your objection.

2166 Mr. Engelhard: I am objecting, your Honor.

Mr. Lamfrom: He just made those remarks, Mr. Batten, as directed against the methods of counsel.

Trial Examiner Batten: Well, he made that statement.

Mr. Lamfrom: May I finish? He had no idea of referring to anything about you.

Trial Examiner Batten: Well, I—

Mr. Lamfrom: No, he didn't.

Trial Examiner Batten: (Continuing.) —I don't think it was at all necessary to call attention to the fact that a ruling had been made on a question in a similar way, before making the objection.

Mr. Lamfrom: I think that is perfectly permissible. It seems to me that counsel must pay attention to rulings which are made in their examination, and the rulings which should be made in other examination.

Trial Examiner Batten: I think the Examiner should have an opportunity to hear an objection, and rule on it.

Mr. Lamfrom: The only point I want to make is that Mr. Engelhard had no intention, as I know him as a lawyer, of inferring that your rulings are being questioned.

Trial Examiner Batten: I didn't say questioned.

Mr. Lamfrom: He is not that kind of a man.

Trial Examiner Batten: I didn't say questioned. I simply say, he should have made the objection without

2167 the preliminary statement.

Mr. Engelhard: I submit that I could have done that.

Trial Examiner Batten: And I still take the position that I could have ruled on the objection without the preliminary remarks.

Mr. Engelhard: I say, I submit I could have done that, but I don't want any inference made here.

Trial Examiner Batten: If you will state your objection, I will rule on it.

Mr. Goldberg: I will reframe the question.

Mr. Lamfrom: I don't think counsel on the other side, knowing us the years he has known us, would insinuate that, would you?

Mr. Goldberg: No.

Trial Examiner Batten: The Examiner is not insinuating anything. I simply request for an opportunity to rule on an objection.

Mr. Lamfrom: And there, again, you are inferring something. I said counsel, counsel would not insinuate, not you. I did not insinuate that.

Mr. Goldberg: I think we have been going for a week and a half, and everybody is a little on edge. I think I recognize the fact that the question is bad, and is subject to objection, and I will reframe it, if I may be permitted, Mr. Examiner.

2168 Trial Examiner Batten: You may do so.

Q. (By Mr. Goldberg) Mr. Coady, how did you interpret that letter with regard to The Falk Corporation being opposed to an Independent Union, by what was said in that very first line of that letter, which read—have you got the exact wording?

Mr. Lamfrom: "We do not favor a union."

Mr. Goldberg: "We do not favor a union"?

Mr. Lamfrom: "We do not favor a union."

Q. (By Mr. Goldberg)—"We do not favor a union."

A. Was that the first line in the letter?

Q. Just the first line.

Mr. Engelhard: Let him read the letter, and see what they have to say about it.

The Witness: A. I don't think I remember the letter.

Mr. Lamfrom: Here is Exhibit 18, there is the letter. You will note—I don't know whether it is first or second, it looks like the eighth line.

Mr. Goldberg: Well, No. 1.

The Witness: A. I can only answer that question truthfully, that when I read that, again, it had no influence on me at all, and I don't think I paid very much attention even to the whole letter. I read it and set it down, and let it go.

Q. (By Mr. Goldberg) When you read that, didn't
2169 you get the impression that the company was opposed to the International Union of Operating Engineers?

A. I don't think it had a bit of influence on me one way or the other, if I remember correctly.

Q. Just answer the question.

A. I can't answer that question "yes" or "no".

Q. Is the company in the habit of putting out numerous bulletins to the power house?

A. Bulletins come out.
Q. How often?
A. I can't say. I very seldom read them.
Q. You seldom read them?
A. Very seldom.
Q. So far as you are concerned, they could quit putting out bulletins?
A. Absolutely.
Q. Does Mr. Falk come and talk to you quite often?
A. No.
Q. How many times have you spoken to Mr. Falk in the last six months?
A. Do you mean, just bid him the time of day, or a conversation?
Q. Conversation.
A. Well, I think perhaps we have had a conversation maybe three times.
2170 Q. In the last six months?
A. Yes.
Q. And how many of those conversations were with regard to joining or refraining from joining a union?
A. Only the one that came in, after Mr. Kingsland had visited.
Q. You place importance on conferences with Mr. Falk, do you not?
A. Please state the question again.
Mr. Goldberg: Read the question.
(Question read by the reporter.)
The Witness: A. Well, importance? Do you mean about our work?
Q. (By Mr. Goldberg.) No, on the fact that he comes up and talks to you.
A. No.
Q. He doesn't just drop in casually, does he?
A. Mr. Falk very seldom has anything to do with me. He goes to the chief engineer, does his talking, and perhaps would bid me the time of day, and go on. His entering the plant does not have any influence on me at all.
Q. You have no other engineers who are members of the Independent Union of Falk Employees?
A. One.
Q. Do you know whether he is a member of that?
2171 A. Pardon me?
Q. You don't know that, whether he is not a member?

A. He is not a member.

Q. Didn't it seem rather strange that Mr. Falk would approach you personally, rather than to have the chief engineer approach you, on this subject?

A. No.

Q. Even though he did have these few conversations with you?

A. I didn't think that at all.

Q. You placed no importance on that?

A. The only importance I placed on that conversation was that Mr. Falk came to us individually to know what we wanted him to do.

Q. Didn't it please you that Mr. Falk took that individual interest in you?

A. I don't know that it did.

Q. It had no impression on you?

A. I don't think so.

Q. No more impression than these numerous bulletins that you do not read?

A. Well, I can't say that it had any impression on me.

Mr. Goldberg: That's all.

Trial Examiner Batten: Just a minute, please.

Mr. Clark?

2172—Q. (By Mr. Clark.) Mr. Coady, you said you saw Mr. Santner the day of the meeting at the North Avenue Auditorium. Where was he when you saw him?

A. Down on the street.

Q. He had been at the meeting, had he?

A. I can't say.

Q. How close to the hall was he?

A. Well, I would say right in front of the building. His car—I think it was his car—was parked there, and he was standing near the car as I came out.

Mr. Clark: That's all.

Mr. Lamfrom: May we have just a short recess?

Trial Examiner Batten: Yes. We will recess ten minutes.

(A short recess was thereupon taken.)

(Witness excused.)

WILLIAM W. SIVRIGHT, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Lamfrom.) Your full name, Mr. Sivright?
A. William W. Sivright.
Q. How old a man are you?
A. Sixty-nine.
Q. Are you an employee of The Falk Corporation?
2173 A. Operating engineer for The Falk Corporation.
Q. How long have you been in such employment?
A. Four years.
Q. Was that your first employment with The Falk Corporation?
A. My first employment.
Q. Are you a member of a labor organization?
A. I am not.
Q. Have you ever been a member of a labor organization?
A. I have not.
Q. You were not one of the men that signed up with the Independent Union of the American Federation of Labor?
A. I signed an application card in '32, 1932.
Q. What happened?
A. I was employed at a laundry at that time, and I got out of the position, so I failed to join.
Q. You did not sign an application to the union in March or April of this year?
A. I did not.
Q. Are you a member of the Independent Union?
A. No, sir.
Q. Has Mr. Harold Falk ever talked to you about unions?
A. Why, we had one conversation one evening, along about 5:00 o'clock in the evening, I guess, close to it.
Q. When was it, about?
2174 A. That was along, I think, the first week in April; I believe it was.
Q. Did you receive one of these postals, like the one I am handing you, Exhibit No. 19, in April, from the I. U. of O. E. No. 311?
A. I believe I did receive such a card, yes, sir.
Q. Was the conversation that you had with Mr. Falk at or about that time?

A. About that time.
Q. Where did the conversation take place?
A. In his office.
Q. Did he call you to his office?
A. He did.
Q. What time of day was it?
A. About 5:00 o'clock in the evening.
Q. After or during working hours?
A. It was just after I went on duty.
Q. Just after you went on duty?
A. I went on at 4:00 o'clock.
Q. State what the substance of the conversation was, what Mr. Falk said, and what you said.
A. He called me over to the office, and I came in. He said, 'Are you afraid of me?" I said, "No, sir, I am not afraid of you." He said, "I am glad to hear it." He said, "I understand that little letter over there scared you."
2175 I said, "It didn't scare me none whatever."
Q. Just a minute.
Mr. Rissman: Let him give the conversation.
Mr. Lamfrom: Yes, I want to finish it.
Q. (By Mr. Lamfrom.) He said something, you said, asking you about whether a letter scared you?
A. Yes.
Q. I show you Exhibit No. 18, and ask you whether that is a copy of the letter which you understand he referred to?
A. Yes, sir.
Q. Now, go ahead and state the conversation.
A. He says, "What do you fellows want over there?" He said, "Do you want Mr. Kingsland to represent you as your bargaining agent, or what?"
And I told him that I was undecided, and I said I would like to have him call a meeting of the boys, to get an agreement among the men who worked for the power house plant, and he said that was out of his jurisdiction, he had no authority to do anything of that kind. That was the long and short of the conversation we had.
Q. In determining whether you should or should not join a labor organization, did anything that Mr. Falk ever said to you affect your choice?
A. No, sir.
Q. Did the letter, which is Exhibit 18, in any manner
2176 affect your choice as to whether you would belong to a labor organization?

A. No, sir.

Q. Has anything that any of the officials have said, if they have said anything, of the Falk Corporation, besides Harold Falk, in any manner influenced you in coming to a conclusion as to whether or not you desired to join a labor organization?

A. No, sir.

Q. Whom do you desire to have represent you in collective bargaining with The Falk Corporation?

A. The employees of the power house.

Q. The employees themselves?

A. The employees themselves.

Q. By that, do I understand that you do not want to have the Engineers Union represent you?

A. Well, I couldn't say that in particular.

Q. What do you mean, the employees? You mean that division known as the power house to be a separate division for representation?

A. Yes, sir.

Q. Have you any choice as to who should represent you, the union known as the American Federation of Labor Union, or the Independent Union of Falk Employees?

A. Well, I don't think that any union should represent us.

2177 Mr. Rissman: May I have that answer?

Mr. Lamfrom: Yes. He said he doesn't think any union should represent him.

Q. (By Mr. Lamfrom.) Do you feel you can get from the company as favorable wages, hours and working conditions, by representing yourselves in collective bargaining with The Falk Corporation, as if the American Federation of Labor Union represented you?

A. I do.

Q. Do you think you can get as favorable results on the same subjects if you represent yourselves as if the Independent Union represented you?

A. I do.

Q. Have you anything in your mind which makes you oppose labor organizations?

A. No.

Q. Do you believe that a man in your situation, as an employee of The Falk Corporation, should be free to determine whether or not he desired to be represented in collective bargaining by an organization, or by himself and his associates in his employment?

A. I think by myself and associates in the power plant.
Q. That is, you feel you should be free to determine that question for yourselves?
A. Yes, sir.
2178 Q. Without any influence on the part of an employer?
A. Yes, sir.
Q. And without any influence on the part of outsiders?
A. Yes, sir.
Q. Or anybody else?
A. Yes, sir.
Q. Is that correct?
A. Yes.
Q. That is, you believe that is a matter for your own self-determination?
A. I do.
Q. And is that the course that has led you to come to the conclusion that you have come to?
A. Yes, sir.
Mr. Lamfrom: Take the witness.

Cross-Examination.

Q. (By Mr. Goldberg.) Have you ever belonged to any labor union?
A. I have not.
Q. Did you ever sign an application card for membership in any labor union?
A. Yes, sir.
Q. You signed an application for membership in the International Union of Operating Engineers, Local 311, in 1933, did you not?
2179 A. In 1932 or '33, I can't just recall it to my memory now.
Q. At that time, you lived at 2845 North Forty-Fifth Street?
A. Yes, sir.
Q. You were employed at that time by the New Way Service Laundry, weren't you?
A. Yes, sir.
Q. And do you remember how much you paid down with the signing of your application card?
A. One dollar.
Q. One dollar, wasn't it?
A. Yes, sir.

MICRO CARD
TRADE MARK ®
22
39
MATTHEW BENDER & COMPANY
1384
359
microcard

Q. When did you discontinue your employment at the New Way Service Laundry?

A. Why, I couldn't recall it to memory just at present.

Q. Was it shortly after the signing of the application card?

A. Yes.

Q. When did you go to work for The Falk Corporation?

A. About four years ago, I don't recall the date right now.

Q. Had you been unemployed for any period of time prior to 1933?

A. Yes.

2180 Q. For what period of time?

A. About three months, I think it was, something like that.

Q. Between 1929 and 1933, was that the total unemployment?

A. I think it was about that, three or four months.

Q. You are the oldest man on the job at The Falk Corporation, are you not?

A. I think I am.

Mr. Lamfrom: You mean in the power house, Mr. Goldberg?

Mr. Goldberg: In the power house.

The Witness: In the power house.

Q. (By Mr. Goldberg.) The oldest man in age?

A. In years.

Q. Not in years of service?

A. No. In years.

Q. And in length of service, you are one of the youngest men, are you not?

A. Yes, sir.

Q. Do you know of anyone that has worked there a shorter period of time than you?

A. Mr. Schnader.

Q. Yes.

A. He and I went there the same month.

Q. In March of this year, that is, on March 27th, 1937, you paid another $2.00 on account of your application fee

2181 for membership in the International Union of Operating Engineers?

A. I did.

Q. Isn't that true?

A. I did.

Q. You paid that to Bill Santner?

A. Yes, sir.

Q. And that signified your desire to proceed into membership into the Operating Engineers Union, isn't that true?
A. Yes.
Q. Now, between that date and the present time, you have had a change of heart, or a change of mind, isn't that true?
A. Yes, sir.
Q. What caused you to change your mind?
A. Because we didn't have enough members that would sign the application, that attended the meeting, that lived up to their obligations, so I thought as long as there were only two or three of us in the power plant belonged to that union, that no union could benefit us whatever.
Q. I see. Is that the only reason?
A. Yes, sir.
Q. What meetings did you attend of the union?
A. Sir?
Q. What meetings did you attend of the union?
A. I didn't attend any union meetings.
982 Q. Then how do you know there were only two or three attending the meetings?
A. They had a kind of a gathering down there, and there was only six of the whole power plant went to that gathering.
Q. Did you go to the gathering?
A. I did.
Q. When was that held, if you know?
A. March 27th.
Q. That is the date you signed your application?
A. No, sir. That is the date—
Q. Pardon me. I mean the date you paid the $2.00?
A. Yes, sir.
Q. Do you know that on March 26th, James McCarthy signed up for the union?
A. I was told he did.
Q. Who are the other individuals that attended that gathering?
A. There was Charles Schnader, William Brandt, Martin Heissman, and George Achterberg.
Q. Was Charles Chase there?
A. Not to my knowledge. I don't know the gentleman.
Q. Or Martin Gaherty?
A. No.
Q. Did you talk to either Chase or Gaherty, and inquire whether they had signed up for the union?
983 A. I did not.
Q. Did you talk to anybody around there, other than

these men that attended that gathering, with regard to whether they had signed application cards for the union?

A. I believe I talked to one.

Q. Who did you talk to?

A. That was John Yunkovich.

Q. Did he tell you that he had signed?

A. He told me that he had signed his application, and paid $1.00.

Q. Wasn't he at that February 27th gathering?

A. No, sir.

Q. He paid his $1.00 on February 27th—oh, pardon me. March. Now, didn't you gentlemen discuss labor organizations amongst yourselves?

A. At that time? At about that time you mean?

Q. About that time.

A. No, sir, not during working hours.

Q. Well, during the noon hour?

A. No, sir.

Q. Was there a sort of an understanding that unions were to be considered very quietly and carefully, and not spoken of openly among the men?

A. Why, I couldn't say as to that.

Q. Was that your feeling?

2184 A. That was my feeling, at least.

Q. And why did you feel that way?

A. Well, I thought if we would get them all organized together, and get everyone of them, we could do bargaining, outside of their working hours.

Q. You agree, do you not, that if all of you men joined together, you could effectively bargain for the men working in the power plant?

A. I was under that impression.

Q. And there is strength in unity, isn't there? That is your feeling?

A. Yes.

Q. Don't you think it would be a desirable situation if all the men could get together and act as a group in the power plant?

A. In one power plant alone, yes.

Q. Don't you think that if even fourteen out of the seventeen got together, and stuck together, that it would be an effective way to deal with the employer?

A. Why, individually, yes.

Q. No, I say, if the fourteen got together, and agreed to

tick in a union, don't you think that would be an effective way of dealing with the employer, for people working merely n the power plant?

A. Possibly.

2185 Q. It was told to you that there were fourteen men who had signed application cards, was it not?

A. It was.

Q. Who told you that?

A. Mr. Santner, I believe his name is.

Q. Did he tell you who those fourteen were?

A. He did.

Q. Did he discuss with you the possibility of getting the hree men who had stayed out of the fold, as it were?

A. I believe he did.

Q. And did you express any plan or any thought as to ow to get those men into the group?

A. As I recall it to mind, I did.

Q. You thought it would be desirable to get them?

A. Yes.

Q. If those fourteen had stuck, you would have stuck, vouldn't you? That is, if the other thirteen would have tuck, you would have been the fourteenth to stay with the nion?

A. I don't think I would.

Q. You don't think so?

A. No.

Q. Assuming that there had not been any circular of the ype that was passed out. Were you approached by Mr. 'alk?

A. I was.

2186 Q. Assume Mr. Falk had not approached you, wouldn't you have stayed then?

A. No.

Q. What made you change your mind?

A. Because I didn't think they could benefit me. I think could do my bargaining for $30.00 a year myself.

Q. Did you ever try, in the four years you have been em- loyed at The Falk Corporation, did you ever go to the em- loyer to bargain?

A. No, sir.

Q. When you were hired, you were given a certain scale wages?

A. Yes, sir.

Q. You have worked under either that scale, or any other

scale that was given you, of your own volition, by the employer, since, haven't you?

A. Yes.

Q. Did you ever go to him and discuss working conditions?

A. No, sir.

Q. Did you ever go to your employer and discuss the hours of service?

A. No.

Q. And still you feel you have been bargaining all this time, don't you?

A. I can't say I have been bargaining.

2187 Q. In other words, summing this thing up, isn't this the situation: At your age you feel that you have to be rather cautious in telling the employer what conditions you want to work under, isn't that true?

A. No, I don't think so.

Q. Well, isn't it your impression that if you had to leave The Falk Corporation, and had to look for a job, somewhere else, it would be, at your age, rather hard to get a new job?

A. It would be kind of hard for me at my age, I think.

Q. You have taken that into consideration?

A. Yes, sir.

Q. Yes. Now, you spoke to Mr. Falk after you paid your $2.00 to the union, isn't that true?

A. I think it is, sir.

Q. Where did you talk to Mr. Falk?

A. In his office.

Q. Did he call you in there?

A. He did.

Q. Had you ever been called into his office prior to that day?

A. No, sir.

Q. Were you impressed by the fact that you were called in there?

A. What was the question again, please?

218 Q. I say, were you impressed with the fact that you were called into Mr. Falk's office?

A. Why, I don't know that I was impressed with it, no.

Q. Were you told before you were sent, before going into the office, what you were being called into the office for?

A. No, sir.

Q. A lot of thoughts ran through your mind as to what might happen to you, isn't that true?

A. Yes, sir.

Q. Even the fear you might have done something wrong, and were being let out of your job, isn't that right?

A. Yes, sir.

Q. Are you a married man?

A. Yes, sir, I am.

Q. Have you children?

A. I do.

Q. Do you have to support them, or are they self-supporting?

A. They are self-supporting.

Q. You are not a man of means, I take it, are you?

A. No, sir.

Q. You have to work for a living?

A. I do.

Q. And that job means a lot to you?

A. It does.

Q. And you had great fear that, in the event you
2189 were going to be let out of your job, you would be in a bad way, on that particular occasion, isn't that one of the thoughts that ran through your mind?

A. Why, I will say if I lost my position there, it would be kind of hard for me to get another one.

Q. Are there any other thoughts that ran through your mind, that I have not covered, that you want to state here?

A. No.

Q. When you got in there, who opened the conversation?

A. Mr. Falk.

Q. Was anyone else present?

A. Mr. John Yankovich, and I think Mr. Falk's assistant.

Q. You don't know the gentleman?

A. I don't know the gentleman.

Q. You don't know his name?

A. No, sir.

Q. What was said, who said it, tell us all about the conversation, please.

A. Mr. Falk, when I went in there, asked me if I was afraid of him. I told him no, I wasn't afraid of him.

Q. Did it seem unusual to you that he opened the conversation with that sort of remark?

A. I don't know if it was unusual.

Q. Go ahead. Tell us what happened.

A. He said, "You got my letter. I am glad to hear
2190 that you feel that way after getting my letter."

I said, "I am not scared of you."

He said, "Well, what do you want?" He said, "What do

you fellows want over there?" He said, "Do you want the bargaining agent for the Engineers Union to represent you, or do you want to represent yourselves?"

I told him I thought we could take care of ourselves.

Q. Did you tell him that you had paid the $2.00?

A. I did not.

Q. He asked you whether you had signed an application?

A. He did not.

Q. Did you tell him whether you had made any move toward joining the Operating Engineers?

A. I did not.

Q. Were you happy about the fact that you did not have to disclose that particular state of facts?

A. I can't say I was happy about it. If he had asked me, I would have answered him.

Q. On March 27th, you attended a little gathering?

A. Yes, sir.

Q. For men working at The Falk Corporation, in conjunction with the International Union of Operating Engineers?

A. Yes, sir.

Q. After that time, you also talked to Phil Santner, and he told you there were fourteen men signed up, didn't
2191 he? You will have to talk. You see, these gentlemen cannot take it down if you nod your head, or shake your head. Speak up, please.

A. Yes, sir.

Q. I misspoke when I said Phil Santner. It is Peter Santner, isn't it?

A. I think it is. I couldn't tell you.

Q. Do you recall the last time you talked to Santner concerning these fourteen applications, and getting in the other three men?

A. I think the last time I had a conversation with him was March 27th, at that gathering. I think that is the last time.

Q. Did he tell you on March 27th there were fourteen men signed up?

A. Yes, sir.

Q. He must have talked to you sometime after March 31st, because there were certain signatures on the 31st. Just reflect. Isn't that really true?

A. I don't recall it to my memory.

Q. When did you go to Mr. Falk's office?

A. Why, I couldn't tell you. It was in April, I think, the first week in April. I couldn't just call it to memory.

Q. Before you were called to Mr. Falk's office, you had not definitely made up your mind that you didn't want
2192 to affiliate with the International Union of Operating Engineers, did you?

A. I had.

Q. Just when did you make up your mind along that line?

A. I couldn't recall that.

Q. You don't know that?

A. No.

Q. Was anything else said by Mr. Falk?

A. No.

Q. Did this other gentleman that worked in the power plant make any statement?

A. I didn't listen to his conversation. I had to go back and get on duty, and I left him to converse with Mr. Falk himself.

Q. Both of you were called into the office at the same time?

A. Yes, sir.

Q. You were spoken to first?

A. Yes, sir.

Q. So that gentleman was spoken to after you left?

A. Yes, sir.

Q. The questions that were directed toward you were not directed towards the other gentleman while you were there?

A. No, sir.

Q. There was not really a discussion. It was a questioning, wasn't it?

2193 A. Just questions.

Q. Did Mr. Falk state that he had had a conference at Mr. Lamfrom's office, at which I was present, and that I had stated to him he was coercing you men, insofar as he was talking to you, and sending this type of notice that he sent, that notice that was handed out in the power plant?

A. I don't think he did.

Q. He didn't mention my name?

Mr. Lamfrom: Do you know this gentleman's name?

Mr. Goldberg: Goldberg.

Q. (By Mr. Goldberg) Did he mention Mr. Goldberg had stated it?

A. No, I don't know that he ever mentioned his name to me.

Q. Did he say that anyone had made that statement at Mr. Lamfrom's office?

A. I believe he said the business agent had been down there, and wanted to have it settled one way or the other.

Q. (By Mr. Lamfrom) Who wanted to have it settled?
A. Mr. Falk.
Q. (By Mr. Goldberg) There was no question in your mind, at the time you talked to Mr. Falk, that it did not please him that the men wanted the International Union of Operating Engineers as their union, was there?
A. No, sir.
2194 Mr. Goldberg: That's all.

Redirect Examination.

Q. (By Mr. Lamfrom) I suppose, as you walked from the power house to Mr. Falk's office, after you were called to the office in April, you were thinking, "Well, pretty soon I will be discharged, and I won't have a job, and I can't get another job." Those were your thoughts, were they?
A. No, I can't say they were.
Q. What were your thoughts as you went over to Mr. Falk's office?
A. I was just wondering what he wanted to talk to me about.
Q. You did not know of any reason why Mr. Falk called you over for the purpose of discharging you?
A. No, sir.
Q. Had it ever been indicated to you that your work was not satisfactory?
A. It had not.
Q. You were just wondering, then, what Mr. Falk wanted to talk to you about?
A. Yes.
Q. Did anything that he said there in any manner indicate to you that if you joined this union, the American Federation Union, that your relations with The Falk Corporation would be interfered with?
A. It did not.
2195 Q. Did you come out of Mr. Falk's office with the impression that you were not going to lose your job?
A. I did.
Q. And why?
A. Why, his conversation throughout, he talked very pleasant to me.
Q. Did you gather from the conversation that Mr. Falk wanted you to refrain from joining any labor organization?
A. No, sir.
Mr. Lamfrom: That's all.

Recross Examination.

Q. (By Mr. Clark) Mr. Sivright, are you familiar with the conditions under which operating engineers who belong to Local 311 work?

A. I don't know that I am.

Q. Do you know of any plants where all of the operating engineers are members of 311?

A. I can't recall it to memory, not any plants in particular.

Q. Was it your idea that this organization that you had an application signed for was to represent just the members at The Falk plant?

A. That was my understanding.

Q. Now, you did not understand, then, that Local 311 had members in other plants?

2196 A. Oh, yes.

Q. You did understand that?

A. Yes.

Q. Did you understand that if you should lose your job for any reason at the Falk plant, and were a member of Local 311, that you could not take a job, although it was offered to you, until all of those members of 311 who had not worked would receive work?

Mr. Goldberg: If the Examiner please, that is not the situation, and I object to the form of the question. It is assuming a fact which is not a fact.

Trial Examiner Batten: Of course, I know of no evidence here which shows that any such condition as that does exist, so I will sustain the objection.

Q. (By Mr. Clark) Did you know that when you signed this application, you agreed not to bring any action against Local 311 in any court of law or equity, no matter what they did?

A. I can't recall it to memory.

Mr. Clark: Do you have that application here?

Mr. Goldberg: Yes, I have the application.

Mr. Clark: Have you any objection to me taking it?

Mr. Goldberg: I think there is a copy in evidence. There is a copy in evidence.

Q. (By Mr. Clark) I call your attention to what has 2197 been furnished by Mr. Goldberg, an application for membership in the International Union of Operating Engineers, and particularly to this language:

"And I hereby expressly waive any right to institute proceedings in any court of law or equity against the Union."

Did you know that was in there?

A. I didn't read it.

Q. Did anyone say it was in there?

A. Not to my memory.

Q. Would it have made a difference if they did tell you that no matter what happened, you could not institute proceedings against Local 311?

A. I don't think it would.

Q. Now, Mr. Sivright, you say that at this meeting of March 27th, there were only six men present from your plant?

A. I think it was six, yes, if I recall it to memory.

Q. And you felt, in view of the fact that there were only those few interested in this, that it couldn't amount to much, as far as a bargaining agent was concerned?

A. Yes, sir.

Mr. Clark: That's all.

Q. (By Mr. Goldberg) When did you notify the union that you were not interested in going ahead?

A. I never notified them.

2198 Q. You didn't do it betweeen March 27th and the date Mr. Falk spoke to you?

A. No, sir.

Q. And you haven't done it since?

A. I have not notified them at all.

Mr. Goldberg: That's all.

The Witness: I automatically dropped out of there for non-payment of my initiation fee.

Redirect Examination.

Q. (By Mr. Lamfrom) When you were going from the power plant over to Mr. Falk's office, that day, did it occur to you that Mr. Falk was going to speak to you about a union matter?

A. I can't recall it to memory.

Q. I mean, did you have any idea that that was what he wanted to talk to you?

A. No, I didn't.

Mr. Lamfrom: That's all.

Trial Examiner Batten: That's all.

(Witness excused.)

JOHN YANKOVICH, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Lamfrom) What is your name?

2199 A. John Yankovich.

Q. (By Mr. Rissman) How do you spell the last name?

A. Y-a-n-k-o-v-i-c-h.

Mr. Rissman: Thank you!

Q. (By Mr. Lamfrom) How old a man are you?

A. Fifty-two, the 16th of October. I was born in 1885.

Mr. Engelhard: Just a little louder, please. We can't hear you.

The Witness: All right.

Mr. Lamfrom: They all want to hear what you have to say.

Q. (By Mr. Lamfrom) Are you an employee at the power house of The Falk Corporation?

A. Yes, sir.

Q. Are you a licensed engineer?

A. I am a licensed fireman.

Q. Are you a member of a labor organization?

Mr. Goldberg: Off the record.

Trial Examiner Batten: Off the record.

(Discussion outside the record.)

Q. (By Mr. Lamfrom) You are a fireman, you said?

A. Yes.

Q. And I asked you whether you were a member of any labor organization.

A. No, sir.

2200 Q. Have you ever been a member of any labor organization?

A. No, sir.

Q. Did you know that the American Federation, Union of Operating Engineer, Local 311, sent a postal card, in April, to a number of men in the power house?

A. Yes, sir.

Q. Did you receive one of the postal cards?

A. Yes, sir.

Q. And the postal card that I show you here in Exhibit 9?

A. Yes, sir.
Q. That is the one you received?
A. Yes, sir.
Q. Did you also receive or have delivered to you from The Falk Corporation a letter, which is like Exhibit No. 18, dated April 16th?
A. Yes, sir, that letter.
Q. And were you called to Mr. Falk's office sometime in April?
A. The first week of April.
Q. Let me ask you this question: In determining whether you should or would be a member of any labor organization, what are the ideas or thoughts that lead you to your conclusion not to be a member of a labor organization?
A. Well, I will tell you right now: A man comes to my house and talks to me, to join a union, and I did join it,
2201 and I pay a dollar down, and then about two days later, I figure it over, and I says, "I pay $15.00 fee, and $2.00 a month dues, that is a little bit too much for me." That is what I recall, that is the trouble.
Q. Your trouble is financial trouble, is it?
A. Yes, sir.
Q. That you did not want to pay the union dues?
A. That's all, and fee.
Q. Your relations with The Falk Corporation have been satisfactory to you?
A. All the way through.
Q. Are they now satisfactory to you?
A. Yes.
Q. Do you know of any reason why they will not continue to be satisfactory to you?
A. None at all.
Q. Do you think that not being a member of a labor organization, you can obtain as favorable wages, hours and working conditions from The Falk Corporation as if you were a member of a labor organization?
A. I think I can get pretty near as much as a member of a labor organization.
Q. Was there anything in this letter, Exhibit 18, which influenced you in coming to the conclusion not to be a member of the American Federation of Labor organization?
2202 A. No, sir, no.
Q. Did the fact that this letter contained a statement here, which I am pointing at, "We are not in favor of a union," did that statement influence you at all?

A. No, sir.

Q. In the matter of being a member of the union, or not a member of the union?

A. No, sir.

Q. Were you afraid that if you were a member of the union, you would lose your job at The Falk Corporation?

A. I wasn't afraid, no.

Q. When you talked with Mr. Falk at his office,—you remember the time?

A. Yes, sir.

Q. Just state what he said and what you said, as you remember it, will you please?

A. Yes, sir.

Q. Go ahead.

A. First, when we got the call to go to Mr. Falk's office, it was in my working hours, I just got on the job, I start about 4:00 o'clock. About 4:30, I was in his office, and first he asked me whether I got the letter from him. I said "yes." Then he say, "Did that scare you?" I say, "Not a bit." That's all there was.

After that, we don't talk much, only one thing, I got 2203 to go back right on the job again, because there ain't anybody there only myself, and I ain't got no time to talk.

Q. You didn't have much time?

A. I didn't have much time.

Q. Did Mr. Falk know you didn't have much time?

A. He knows that, but he placed chief engineer on my place until I come back.

Q. During the course of the conversation that you had with Mr. Falk, did he ask you whether you were a member of a labor organization?

A. I tell you this way: He just told me this way, that he wants to know if our boys in power house want to join it or not, and he wants to get done with it. He says he was bothered at that time, and he wants to know if we join it or not.

Q. Did he say he didn't want you to join it?

A. No, he didn't say that.

Q. Did he say anything to the effect that you men had your own choice in the matter?

A. That is what he said, organize it or not. He want to know about it, and he is satisfied to sign it. That's all I know.

Mr. Lamfrom: That's all.

Cross-Examination.

Q. (By Mr. Goldberg) Did you ever belong to any
2204 labor union before February 27, 1937?

A. No, sir.

Q. You never made application for membership in any union?

A. No, sir.

Q. Had you ever thought of joining a labor union?

A. No.

Q. In the past?

A. No.

Q. You started to work at The Falk Corporation in 1933, didn't you?

A. Yes. I started first in 1928, then we got laid off for year, then I started to work in power house '33.

Q. Yes.

A. And I started to work by Falk Corporation thirty years ago, 1907.

Q. In 1907, you started at Falk?

A. Yes, sir.

Q. But you were put into the power house in 1933?

A. Yes, the power house I started to work in '33.

Q. And you are one of the youngest men, in point of service or length of service in the power house, aren't you?

A. No, sir. We have two members behind me.

Q. No, only Carl Herzenroeder is behind you, isn't he?

A. No. Art Cotton, he is about two years now.

Q. Oh, yes. He was put in the power house in 1935?

2205 A. Yes.

Q. You think very much of the opinion of Mr. Falk, do you not, Harold Falk?

A. Yes.

Q. Has he ever shown a personal interest in you?

A. No, sir. I don't see Mr. Falk maybe once a year, sometimes.

Q. Since 1907, how many times have you seen him and talked to him?

A. I seen him the first time when he called me in the office.

Q. That is the very first time you talked to him?

A. That is the first time.

Q. They called the chief engineer to take your place, didn't they?

A. They called the chief engineer to take my place until I got down in the office to talk with Mr. Falk.

Q. It seemed to you like a very important proposition, that they had the chief engineer take your place?

A. I was called for it, I was to go to the office, the chief engineer say Mr. Falk want to talk to me in the office, and that he would take my place until I get back.

Q. Did the chief engineer ever take your place before that?

A. No.

Q. That is the first time, in all the time you have
2206 worked there?

A. That's all.

Q. Were you a little afraid of what might happen when you got into Mr. Falk's office?

A. Not a damn bit.

Trial Examiner Batten: Well, if I were as big as you, I don't think I would be, either.

Q. (By Mr. Goldberg) You think you could handle him?

A. Well, I don't know, but I take a chance, anyhow.

Q. Did he ask you whether you had joined the union?

A. Mr. Falk?

Q. Yes.

A. He asked me if I did join it, and I told him I did, and I told him I pay a dollar.

Q. What did he say then?

A. He said, that is up to me.

Q. But what else did he say?

A. Nothing else.

Q. He didn't say another word about it?

A. No, he didn't say nothing to me.

Q. He didn't ask you whether you could use that $40.00 a year, did he?

A. No.

Q. He didn't ask you whether you could use that $40.00 a year?

2207 A. No. I didn't say nothing about that.

Q. Or the $30.00 a year. It is $30.00 a year.

A. He didn't say nothing about that.

Q. When did you change your mind about the union?

A. That is what I tell you.

Q. (By Trial Examiner Batten) When? A little while ago?

A. I told you I can't afford to pay the fee and the dues, every month $2.00 dues, and $15.00 to join, that is too much money for me. That is why I give up.

Q. (By Mr. Goldberg) You are earning about $155.00 a month, aren't you?

A. Yes, sir.

Q. Did you ever figure it out by the hour?

A. No. We get by month.

Q. How many hours do you put in a week?

A. It all depends. We put six days a week, eight hours a day, and one day off a week.

Q. If the union were able to get you an increase in wages to offset the $30.00, a year, you have to pay to the union, and still leave some money in your pocket, then you would be satisfied to be a member, wouldn't you?

A. No, I don't pay much attention to any union.

Q. I am just asking you a question, if the union could make some money for you, then you would be satisfied to belong to that union, wouldn't you?

2208 A. Why, we all look for money, sure.

Q. Sure. That is what I am saying. You have nothing against the union, outside of the $30.00 dues a year, and the $15.00 initiation fee, is that right?

A. Yes, that's all.

Mr. Goldberg: That's all.

Mr. Rissman: No questions.

Trial Examiner Batten: Mr. Clark?

Mr. Clark: No questions.

Redirect Examination.

Q. (By Mr. Lamfrom) Who were the other positions you worked in in The Falk Corporation besides the power house?

A. In 1928, when I was working for Mr. Falk's plant, I was blacksmith's helper at that time; and in 1931, I got laid off, I was off a year and a half, pretty near two years, then I came back again to Mr. Falk and he told me he is going to give me a chance for two or three days a week, anyhow, to make a living, and I told the boss of the power plant that I got a fireman's license, if there is any chance opened up in the power plant, I would like to get on fireman's job again, and at the same time the chance was open, and he called me in the power house.

Q. Is the job you now have the job that has paid you the most money since you were at The Falk Corporation?

A. How?

2209 Q. Is the job you now have the one that has paid you the most money?

A. Yes, the job now pays most money than any one before.

Mr. Lamfrom: That's all.

Mr. Goldberg: That's all.

(Witness excused.)

Trial Examiner Batten: I think Mr. Lamfrom or Mr. Rissman will call you if they think it is necessary for you to return.

Mr. Goldberg: They did that yesterday, thank you.

Mr. Lamfrom: Mr. Falk, will you return to the stand?

Trial Examiner Batten: I think we will recess before resuming with Mr. Falk.

(A short recess was thereupon taken.)

HAROLD S. FALK, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Lamfrom) Some reference was made, Mr. Falk, in your examination by Brother Rissman of a speech that you made to the Junior Association of Commerce, which speech was broadcast over the radio. Do you remember that?

A. Yes, I do.

Q. Do you remember about the time that that speech was made?

2210 A. No, I do not. It seems to me about a year ago.

Q. I am handing you now a typewritten copy of what purports to be that speech, and ask you whether you have heretofore looked over this, and whether or not that is the speech, or a written copy of the speech that you made at that time?

A. Yes, it is.

Q. Did you deliver that speech from a written document at the time?

A. I did.

Mr. Lamfrom: I ask to have this marked Respondent's Exhibit No. 11.

Mr. Rissman: You can offer it.

Mr. Lamfrom: I offer it in evidence.

Mr. Rissman: I think the Examiner asked that this be produced, so I do not object to its introduction.

Trial Examiner Batten: Yes, I think I stated at the time.

Mr. Rissman: You asked if it was available.

Mr. Lamfrom: It is natural that I offer it in evidence. You have no objection?

Mr. Rissman: No.

Trial Examiner Batten: There being no objection, it will be received.

(Thereupon, the document above referred to, marked RESPONDENT'S EXHIBIT NO. 11, was received in evidence.)

2211 Mr. Lamfrom: Mr. Engelhard will now examine Mr. Falk, Mr. Batten, on matters concerning which other witnesses have testified about. He has been over the transcript and I haven't, and it is a matter of convenience, that's all.

Q. (By Mr. Engelhard) Were you in the courtroom at the time when William Neal was on the stand to testify?

A. I was, part of the time.

Q. That was last Thursday night, as you recall?

A. Then I was here all of the time, if that was all his testimony.

Trial Examiner Batten: I think his testimony ran more than just the evening, didn't it, Mr. Engelhard?

Mr. Engelhard: I think he started in the afternoon, and he came back and finished in the evening.

The Witness: I heard what was finished in the evening. I was not there during the day, I don't think.

Q. (By Mr. Engelhard) In connection with the meeting of April 8th, which was the last Works Council meeting, Mr. Neal testified, in answer to the question,

"Will you tell us what Mr. Falk said at that meeting?", and he said:

"Well, we had asked for a vacation with pay and a bonus at our former meeting."

Stopping there, now. Do you recall whether or not a wage increase and a bonus were discussed at the March meeting of the Works Council?

2212 A. No, I do not.

Q. Do you know whether the Works Council had requested a raise in pay at the March meeting?

A. No, I do not.

Q. (Reading):

"Mr. Falk came in and offered us a raise in wages to take the place of vacation with pay, and also stated he would consider the bonus later."

Is that correct?

A. I said that.

Q. (Reading):

"That is, he would give us the raise and a vacation with pay, providing there was no third party intervening."

A. I don't think I said "third party intervening". What I had in mind was that the arrangement that I was now making with the Council, as I said, was to stand as long as the Council stood, and that if the Council went out of existence for any reason, and some other organization came in, that the negotiations being made and having been made with the Council would not stand, that new negotiations would have to be opened up.

Mr. Rissman: I move that be stricken as not the conversation. Mr. Falk prefaced his remark by saying "I
2213 had in mind."

Trial Examiner Batten: Read the question, please.

(Question read by the reporter.)

Trial Examiner Batten: The question, as I understand it, is whether there was any such conversation. Is that right, Mr. Engelhard?

Q. (By Mr. Engelhard) Whether or not you made such a statement, and nothing further.

A. I made such a statement, yes.

Q. Is that all you said, "* * providing there was no third party intervening?"

A. I don't believe it was all I said, no. I might have said a little more, but I don't remember now what it was.

Q. Did anybody ask you at that meeting who you meant by "a third party"?

A. No.

Mr. Rissman: If the Examiner please, has the previous answer been stricken?

Trial Examiner Batten: Was there any request that it be stricken?

Mr. Rissman: Yes. I moved it be stricken, at that time, because it was not responsive, and did not relate conversation.

Trial Examiner Batten: It may be stricken.

Q. (By Mr. Engelhard) Mr. Neal said that you said that you would give a raise and a vacation with pay, providing there was no other party intervening.

2214 A. No, I didn't say that.

Q. What did you say?

A. I said substantially that the raise that we had dis-

cussed and had agreed upon would stand with this group; that if another group came into being, that this arrangement would be off, and new negotiations would have to be had. That was the substance of the discussion.

Q. When did you say that?

A. As I remember that, it happened at what has been referred to here as the last meeting of the Works Council.

Q. That was April 8th. Why did you make that statement?

A. Why did I make it?

Q. Yes, why did you make that statement?

A. Because I didn't see any reason why I should make a blanket arrangement, and then have it stand, no matter what happened afterwards.

Q. Did you have in mind at that time the thought that you might be called upon to bargain with some other group later on?

A. Yes, I think I did.

Q. You knew that the Works Council would have to quit?

A. Yes.

Q. Mr. Neal testified that at that meeting, you talked about the Cutler-Hammer Company, that you said, in answer to a question,—Mr. Neal said:

2215 "He talked to the officials down there, and they had the C. I. O. and the American Federation of Labor both in there, and it seems they were having trouble, and that he named a certain amount, I don't remember just what it was, that belonged to each one, he said they were having trouble and that Cutler-Hammer was going to let it run along the way it was as long as they could; he said if they couldn't do anything about it, they were going to dump it over into the government's lap."

Did you say anything like that at that meeting on the 8th?

A. Perhaps I did mention the Cutler-Hammer situation. I don't recall it very distinctly, but I may have, because I knew about the Cutler-Hammer situation; I talked to Mr. Voght a number of times about it.

Q. What did you say about the Cutler-Hammer situation?

A. If I said anything, I recited the situation as I knew it, and that simply was this: That Mr. Voght had told me on several occasions that they had both organizations—or they had the A. F. of L. in their plant, that the toolmakers had told them they didn't desire to belong to the A. F. of L., and that if they were forced to join a union, they would prefer

the C. I. O., and, in my conversation with Mr. Voght,
2216 I said, "What are you going to do if you get that kind of organization in your plant?" He said, "Well, we will have to let the Labor Board decide it," or something to that effect.

Q. Who is Mr. Voght?

A. Mr. Voght, I think, is the vice-president.

Q. Of Cutler-Hammer?

A. Of Cutler-Hammer.

Q. Would you say that is what you said, in substance, to the question?

A. If I said anything at that meeting, undoubtedly that is what I said.

Q. Mr. Neal testified that at the meeting on the 8th, that Mr. Adamski asked you what you aimed for the boys to do, the record says:

"Adamski asked him what he aimed for us to do."

"Q. What did Mr. Falk say?" Answer: "Mr. Falk said he didn't believe he had anything to say about that, but he would answer the question if, that is what he figured on doing."

Did you, at that meeting on the 8th, indicate to the men that you aimed for them to start an independent union?

A. No.

Q. Did you talk about an Independent union at that meeting at all?

2217 A. No.

Q. Mr. Neal also testified,

"Mr Falk said that he would get the information for us, how to start this independent union, and would let us know later about it."

Mr. Rissman: If the Examiner please, I object to the form of the questioning. We will be here for six months. Mr. Engelhard is not cross-examining Mr. Neal now. He may examine Mr. Falk as to anything and everything he said at all of these meetings, but the method he pursues, reading the testimony that is already in the record, can serve no purpose, but merely prolong the proceedings and clutter up the proceedings.

Trial Examiner Batten: I think you are mistaken when you say he is reading the testimony, because he is not, there has been no transcript made of the proceedings here, so I assume the questions are not read from the transcript.

As I understand it, they are read from an unofficial tran-

script which the Respondent's own reporters have made. However, I see no objection to him proceeding. As a matter of fact, it may be shorter to do it this way than to go through extensive cross-examination, Mr. Rissman, so, for that reason, I would overrule the objection, because I think, as a matter of saving time, the way in which Mr. Engelhard is
2218 proceeding probably is the most satisfactory way.

Mr. Rissman: When I said "transcript", I meant a typewritten record of his, unofficial, which purports to be a record of what has occurred here.

Trial Examiner Batten: I will overrule your objection. You may proceed, Mr. Engelhard.

Mr. Engelhard: May I have the last question?

(Last question read by the reporter.)

Q. (By Mr. Engelhard) (Continuing) Did you, at that meeting of the 8th, make any such statement, that you would get information for the men to start an independent union?

A. No.

Q. Did any of the men request any information at the meeting of the 8th from you about an independent union?

A. Not that I remember anything about.

Q. Mr. Neal also testified that at the meeting of the 8th, you said that they could meet, "That the Works Council and former Works Council men could meet to make arrangements for organizing an independent union on company property, but after it was organized, we would have to meet off of the property."

A. No.

Q. Did you make any such statement?

A. I did not make such a statement.

Q. Was there any discussion of meeting on company
2219 property at that meeting?

A. I don't remember any.

Q. For the purpose of organizing an independent union?

A. I don't remember any.

Q. Do you recall, Mr. Falk, whether anybody asked you for permission to meet in the basement of the hospital?

A. No, I don't.

Q. At that meeting?

A. No.

Q. Were you present at any other meeting when the men met in the basement of the hospital, other than on the 12th of April?

A. No.

Q. Mr. Neal testified that you were there on the 13th.

A. No.

Trial Examiner Batten: Will you read his testimony? Do you have his testimony there?

Mr. Engelhard: Yes.

Trial Examiner Batten: Will you read the questions and answers, please?

Mr. Engelhard: (Reading):

Question: "What occurred at that meeting of April 13th?"

Answer: "Well, the meeting was adjourned, and some of the men—some of the night men went home. I went out in the foundry and talked to Stanley Adamski."

2220 Then he refers to a meeting at the plant, when Mr. Falk was met, in the hallway.

Trial Examiner Batten: The reason I asked that, Mr. Engelhard, my recollection is that he did not testify positively. I think he said it was his recollection that he was there. Is that what the record shows?

Mr. Engelhard: He says here: (Reading):

"Was another meeting called?"

"Yes."

"When?"

"That same afternoon."

"Who was present at this meeting?"

Answer: Practically all the fellows that had been present at the first meeting, and one or two of the night men."

"Was that held underneath the hospital?"

"Yes."

"What took place at that meeting?"

Answer: "Well, Mr. Falk explained what he had found out."

Question: "Mr. Harold Falk?"

Answer: "Mr. Harold Falk."

Question: "Just tell us what he said if you can."

Answer: "Well, he said we would have to incorporate, and that we would have to do it as quick as possible because

2221 the C. I. O. were working in the plant."

Q. (By Mr. Engelhard) I ask you, first, whether or not you attended a meeting below the hospital on the 13th?

A. No, I only attended one meeting, that was the first one.

Q. I will ask you whether, at any meeting, you made the remark that the men would have to incorporate, and that they would have to do it as quick as possible, because the C. I. O. was working in the plant?

A. No.

Mr. Rissman: I may point out, if the Examiner please,

that Mr. Neal in his testimony was indicating that Mr. Falk had said to the men—Mr. Neal did not testify that Mr. Falk made that statement at the meeting. As I remember his testimony, he said Mr. Falk told the men at a meeting of the Engineering Department.

Trial Examiner Batten: I think; Mr. Rissman, when the Examiner gets the official transcript of the record, by reading the entire testimony I can tell.

I simply made the remark that I wanted Mr. Engelhard to read it.

Mr. Engelhard: I can clear that up, because I have all this marked with red, in order to get the chronological development, and I now turn to the cross-examination I gave Mr. Neal about this meeting of the 13th.

2222 Trial Examiner Batten: Well, I don't know as it is necessary. As I say, I will read the entire transcript.

Q. (By Mr. Engelhard) With reference to the remark, or to the matter that I read to you, that you said at that meeting of the 13th, "Well, he said we would have to incorporate, and that we would have to do it as quick as possible, because the C. I. O. were working in the plant," I ask you whether or not you made that remark at any time at any meeting, or anywhere else?

A. No, I did not.

Q. To the men?

A. No, I did not.

Q. Mr. Neal testified that between the first meeting on the 13th, and the second meeting on the 13th, that you and a number of other men, including Mr. Neal, had a short conversation in the hallway—I think he said the Electrical Department.

Trial Examiner Batten: By the Electrical Department?

Mr. Engelhard: Yes, near the Electrical Department.

Q. (By Mr. Engelhard) Do you remember, Mr. Falk, of meeting some of the men on Tuesday afternoon of the 13th?

A. I wouldn't deny that I did, but I haven't got a flicker of recollection on it, at all.

Q. He claimed that at that meeting you told that you had found out how to incorporate?

2223 A. I am sure I didn't make that statement.

Q. Did you make any such statement at that time?

A. I am sure I did not.

Q. Or at any other time?

A. No, sir.

Q. And that another meeting should be called, and that to get this thing going as quick as he could?

A. No, sir.

Q. Did you make any such statement at that time, or at any other time?

A. No.

Q. To any of the men?

A. No.

Q. What is your answer?

A. No.

Q. Mr. Neal testified at the meeting of the 12th you came in towards the end of the meeting, or rather, you came in after the meeting had been going on for some time, and that you said that you did not have any information and could not get the information as regards the forming of this organization. Did you make any such statement at the meeting on the 12th?

A. No.

Q. What questions did the men ask you about—I mean, about what subject did the men ask you questions at the 2224 meeting of the 12th?

A. The only thing I can recall is the discussion that we had about the Wagner Act, or it probably included the other one, too, but that is the only thing I have any memory on. I simply tried to tell them what their rights were under the Act. That is all I could do. There was that other request for moving wages up, as I remember it, too.

Q. I mean with regard to the Independent Union?

A. No.

Mr. Engelhard: What discussion there was. I might say I have only got one more item.

Trial Examiner Batten: Go ahead, Mr. Engelhard. We still have forty minutes before lunch time.

Q. (By Mr. Engelhard) Mr. Landry testified that John Wilfer asked you a question regarding the manner of raising wages, and asked you, if you pushed the raise up a month, from June 1st until May 1st, wouldn't it keep a lot of men from joining the C. I. O. I will ask you whether or not Mr. Wilfer's question included any such statement?

A. No.

Mr. Engelhard: That's all.

Recross-Examination.

Q. (By Mr. Rissman) Mr. Falk, these various meetings that you attended in April, you are unable to recall many of the things that were said and done, as you have testified here, is that so?

2225 A. Yes, in detail.

Q. Yes. Some of these items that Mr. Engelhard has read to you, you can't recall whether they were or were not said just in that way?

A. I am pretty definite on the fact that this constant reference to C. I. O. and incorporation of the Independent Union was not brought up.

Q. On this last question, with reference to the moving of the raise from June 1st to May 1st, and keeping the men out of the C. I. O., if that were done, Mr. John Mitchka also testified, and so did several other witnesses in addition to Mr. Landry.

Is it still your testimony that you didn't hear it, or is it possible that you did hear it, but do not recall it at this time?

A. I certainly have no recollection of any reference to the organization in connection with that question.

Q. Yesterday afternoon, you testified in response to a question put to you by Mr. Lamfrom that you were disappointed to see your men going into the C. I. O., or disappointed at the C. I. O. activities. Do you recall that testimony?

A. I do, yes.

Q. Did you ever express that disappointment to any of the employees?

2226 A. I may have.

Q. Mr. Lamfrom has asked you a number of questions with reference to the effect that the two labor organizations had upon the production and shipping of finished products and receipt of raw materials by the company. Do you recall that?

A. Yes, sir.

Q. And I believe you testified that for about a period of two weeks, there was an interruption in the affairs of the company?

A. That's right.

Q. Can you tell us if you know, Mr. Falk, what effect a strike or lockout at your plant would have upon the shipment of finished products and the receipt of raw materials?

A. It would completely stop.

Q. How did you know, Mr. Falk, that the meeting of April 8th was the last meeting of the Works Council, or was it the last meeting?

A. I don't know that I did know that.

Q. I believe you testified, in response to a question by Mr. Engelhard a little while ago, that at the time you spoke to the men about the Cutler-Hammer situation, you had in mind the fact that the Works Council would be affected by legislation, and would no longer continue?

A. I had it in mind, yes, but I hadn't given it very
2227 much thought as to whether that was going to be the last one or not.

Mr. Lamfrom: I believe the record shows, Mr. Rissman, it was on that very day, April 8th, that the assembly passed the Severson Act.

Q. (By Mr. Rissman) Do you recall whether you knew that fact at the time of this meeting?

A. No, I don't.

Q. In this speech that has been marked and introduced here as Respondent's Exhibit 11, there is quite a bit of matter there with reference to foremen training and labor policies of an employer, and things of that sort. Can you tell us, Mr. Falk, if the foremen and supervisory officials of your company are trained in any way so that they may extend to the employees they come into contact with the labor policies of the company?

A. Mr. Rissman, before the depression, we were in the habit of having monthly meetings with the foremen, at which we discussed quite freely the problems of the plant, and also our cost sheets. When the depression came along, we had to give it up, and we haven't since resumed, although I am hoping to do it.

Q. Do the foremen at your plant have any way of knowing what the labor policies of the company are?

A. Yes, I should say so, by constant contact with us,
2228 and discussions that we have. We have no printed forms, or instructions, or anything to that effect, if that is what you have in mind.

Q. No. I mean through their contacts with you.

A. That is really the only way.

Q. And perhaps discussions. Were you present, Mr. Falk, at the meeting with the representatives of the Independent Union when they asked to be recognized for the purposes of collective bargaining?

A. No, I was not.

Q. What was your first contact with representatives of that union? Let me refresh your memory. I believe you testified that there was a meeting on April 26th, when representatives of the Independent Union came in to see you about some other matters.

A. The date I don't know, but I did have a meeting with them sometime subsequent to that.

Q. Yes. Did you know at the time you met with them how many employees they represented?

A. Yes, I think I did. I think they had supplied us with an affidavit, although I don't recall the date of it, I am not certain about that, whether I knew at that time from that affidavit, or before.

Q. Well, this affidavit indicated what?

A. I don't remember the number on it now.

2229 Q. I don't mean the number. Did it indicate the number of employees?

A. I think it did.

Q. Was that number, as you recollect it now, more than a majority of the employees?

A. As I recollect it, it was.

Q. Did you take any other steps to determine whether or not the information in the affidavit was accurate?

A. No, I did not.

Mr. Rissman: That's all.

Redirect Examination.

Q. (By Mr. Engelhard) Mr. Falk, how did it happen that the men were paid for the time spent in attending the meetings on the 12th, 13th and 14th?

A. How did it happen that they were paid?

Q. Yes, how did it happen that they were paid?

A. I don't know.

Q. Did you instruct anyone to pay the men for attending those meetings?

A. No.

Mr. Rissman: I believe on direct examination originally, when he first testified, he said he didn't know the men had been paid, and he didn't know anything about the payment.

Q. (By Mr. Engelhard) When did you discover that the men had been paid? Now, I mean you personally.

2230 A. I don't know whether I discovered it. I know I heard it discussed around the office there, but I didn't pay very much attention to it.

Q. Do you know on whose authority these men were paid?
A. No, I do not.
Q. Or whether or not anybody authorized payment?
A. No, I do not.
Q. From the system that you have in your plant, if men punched their cards, and it went into the Accounting Department, the Accounting Department pays out whatever is shown on the cards?
A. Unless somebody in that department had some reason to object to it for some reason or other.
Q. There are errors made occasionally?
A. Oh, yes.
Q. Or is that quite frequent, that there are errors made?
A. I imagine there are probably—in a large payroll like that, there are probably a number of errors each payday.
Q. So that some men are overpaid, and some men underpaid, is that right?
A. That's right.
Q. And later on, when that is discovered, an adjustment is made?
A. That's right.
2231 Q. Either up or down?
A. That's right.
Q. When you were informed that these men had been paid for the time that they were in attendance at these meetings, what action did you order?
A. I didn't order any.
Q. Who deducted their pay?
A. I think the Payroll Department.
Q. On whose authority?
A. Very probably Mr. Connell's.
Q. You gave no order—
A. No.
Q. (Continuing)—that the amount be deducted?
A. I did not, no, sir.
Q. So far as you know, Mr. Falk, Mr. Connell sought the advice of Mr. Lamfrom when he discovered these men had been paid, as to whether or not that could stand?
A. Maybe he did. I don't know about it. He may have.
Q. Mr. Lamfrom stated for the record the other day that he advised your corporation to deduct that, after it was discovered that they had been paid. That is your understanding of it, is it?

Mr. Rissman: Mr. Lamfrom has stated that. We do not question it at all.

Trial Examiner Batten: I don't think there is any
2232 dispute, Mr. Engelhard, as to that.

Mr. Engelhard: I wanted to know what Mr. Falk personally had to do with it.

Trial Examiner Batten: He said he didn't.

The Witness: I didn't know until he told me just now you had talked with him, I didn't know you had talked to him.

Mr. Rissman: Off the record, we do not question that at all. We may question the soundness, but not the fact he advised him.

Mr. Lamfrom: You mean to say your opinion varies in any respect with that?

Trial Examiner Batten: This is not on the record.

(Discussion outside the record.)

Mr. Lamfrom: Mr. Falk, I just want to ask you one more question:

Q. (By Mr. Lamfrom) I am handing you here a typewritten document, dated June 24, 1937, and ask you what that is.

A. It is a statement that I wrote and put up on the bulletin board, apparently on the 24th of June.

Mr. Lamfrom: I ask to have it marked Respondent's Exhibit 12.

Mr. Rissman: May I see it?

Mr. Lamfrom: Sure.

Mr. Rissman: I have no objection.

2233 Mr. Lamfrom: This, Mr. Examiner, is a statement by The Falk Corporation to the effect that neither under the National law or the Wisconsin law is it required that the employer permit the collection of dues for any union on company premises, and that The Falk Company announces they are not agreeable to the collection of any such dues for any organization on Company premises.

I offer that in evidence.

Trial Examiner Batten: It may be received.

(Thereupon, the document above referred to, marked RESPONDENT'S EXHIBIT NO. 12, was received in evidence.)

Mr. Lamfrom: Respondent rests.

Recross Examination.

Q. (By Mr. Rissman) Prior to the posting of this notice, had there ever been any announcement of any rule regarding the matters stated in that notice?

A. Not printed, no.

Mr. Rissman: That's all.

Trial Examiner Batten: I presume, in order to clear up the situation that came up a moment ago, I think the Examiner at this time will request the reporter to put this statement in:

That all references which have been made to testimony and statements by witnesses in this proceeding have been
2234 read, not from the official transcript.

Mr. Lamfrom: That is, when they have been read.

Trial Examiner Batten: Yes.

Mr. Lamfrom: Yes.

Trial Examiner Batten: Whenever they have been read, they have merely been read from an unofficial transcript, and therefore cannot be considered official.

Where there is any variance between the statements as contained in this unofficial record and the official record, of course the official record will have to be controlling.

Mr. Lamfrom: Unless, for some other purpose, at a later time, it would be necessary to have issued out of a court a writ of coram nobis.

Trial Examiner Batten: Unless, of course, counsel appears before the proper authorities, and makes the proper motions.

Mr. Lamfrom: You understand what I mean?

Trial Examiner Batten: Yes, I understand. The proper motions to revise, correct, add to, and change the official transcript.

Mr. Lamfrom: All interlineations, alterations and changes made before signature.

Trial Examiner Batten: Mr. Clark, do you want to start now?

You are excused, Mr. Falk.

(Witness excused.)

2235 Trial Examiner Batten: Or would you rather start after adjournment?

Mr. Clark: I think we can expedite matters if we wait until after adjournment.

Trial Examiner Batten: We will reconvene at 1:30.

Let me ask this: This does not need to be in the record.

(Discussion outside the record.)

Trial Examiner Batten: Then we will reconvene at 2:00 o'clock, gentlemen.

(Whereupon, at 12:10 o'clock p. m., a recess was taken until 2:00 o'clock p. m. of the same day, Wednesday, August 25th, 1937.)

2236 After recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 2:00 o'clock p. m.)

Trial Examiner Batten: We are ready to proceed.
Mr. Clark: I will call Mr. Prodoehl.

ALBERT PRODOEHL, a witness called for and on behalf of the Independent Union of Falk Employees, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Clark) What is your full name?
A. Albert Prodoehl.
Q. How old a man are you?
A. Thirty-one.
Q. Are you married?
A. Yes, sir.
Q. Do you have a family?
A. Yes, sir.
Q. Where do you live?
A. Sir?
Q. Where do you live?
A. On the South Side.
Q. What is your address?
A. 1811 South Fourth.
Q. Mr. Prodoehl, you are employed at The Falk 2237 Company, are you?
A. Yes, sir.
Q. How long have you been employed there?
A. Approximately fourteen years.
Q. What education have you had?
A. Eighth grade, in grade school, night school at Tech, and an I. C. S. course in mechanical engineering, at night work at Wisconsin Extension.
Q. What was the nature of the work you took at the Wisconsin Extension?
A. Just specializing in mechanical engineering.
Q. What is the fact as to whether you were employed prior to the time you went to the Falk Company?
A. At the Daly Manufacturing.
Q. What were you doing there?
A. Oh, I was just working in the tool room, handing out tools.
Q. What department of The Falk Company did you go into when you started?
A. I started upstairs in the Tracing Department, and

went down in the large core room, and from there I went to the big floor in the foundry for nine months, and from there I went into the Machine Shop.

Q. How long were you in the Machine Shop?

A. About two years.

2238 Q. And from the Machine Shop, where did you go?

A. Then they called me back up in the Engineering Department.

Q. Have you been there since?

A. Yes, sir.

Q. What is the nature of your work now?

A. Checking and designing.

Q. And you are generally known as a draftsman, are you?

A. Yes, sir.

Q. Do you have occasion in your work to visit the foundry and machine shop at the Falk plant?

A. Yes, sir.

Q. You are familiar with the layout of that plant?

A. Yes, sir.

Q. You are familiar with the work done in it?

A. Yes, sir.

Q. Do you know a lot of the men who work in the foundry?

A. Yes, sir.

Q. Are some of the men who work in the foundry those who worked when you were there?

A. Some of the men are still there.

Q. And how about the machine shop?

A. There are quite a few of them.

Q. Now, what is your relation with these men who work in the foundry and the machine shop, as well as you

2239 can tell us?

A. Well, there are a few of them I know outside of work, and I still go to see them, go out with them.

Q. With regard to those that you do not see outside of work, do you feel above and superior to them?

A. What do you mean? In what respect?

Q. In any way.

A. Why, why should I?

Q. I am just asking you the question.

Trial Examiner Batten: He is asking you.

The Witness: A. No, I do not.

Q. (By Mr. Clark) The fact that they work in dirty clothes, does that make any difference to you?

A. Not at all. I once did.

Q. Now, Mr. Prodoehl, you were never a member of the Works Council, were you?

A. No, sir.

Q. What is the fact as to whether your department was eligible for membership in the Works Council? Did you have any representative in the Works Council?

A. Not at all.

Q. Directing your attention, Mr. Prodoehl, to the week prior to April 18th, do you have that time in mind?

A. Yes.

Q. With relation to meetings, will you tell us what
2240 you know about any meetings that were had that week?

A. The first that I heard of it was when I was informed to come downstairs below the hospital, that was a Thursday, that was the 15th. I don't even know who called me down.

When I got down there, they said they would like to have the Engineering Department represented, and I didn't know what it was all about, I didn't say anything, I just sat and listened, because I gathered at the time that these meetings were going on for some time, and I didn't open my mouth. I just sat and listened.

Q. After that week, the week commencing with April 19th, do you know of any meeting that was had then?

A. When this started, I attended this open-air session at the North Avenue Auditorium.

Q. You refer to the meeting of the 18th?

A. Yes.

Q. You were at that meeting?

A. Yes.

Q. Tell us as best you can what you recollect happened at that meeting?

A. Nothing very much happened. I didn't know what we were supposed to do at that meeting. I happened to be up on the stage, and they asked me what it was all about, and I told them I didn't know, that the rest of the men formed this, called this meeting, and as far as I remember, why noth-
2241 ing came of it.

Q. You call it an open-air meeting. Why do you describe it that way?

A. There was no order, everybody was opening their mouth; we did nothing.

Q. (By Trial Examiner Batten) You mean "hot air"?

A. Hot air? Well, a lot of windows were open, and there was no order, one man over there, this one, and that one, they would all get up and talk at the same time.

Q. (By Mr. Clark) Do you remember whether Mr. Burke appeared at that meeting?

A. Yes, he did.

Q. Do you know, with relation to the meeting, how long after it started he came?

A. I think they requested to have some legal advice up there, and somebody said, "It is all taken care of. If we want it, I will call up an attorney."

Q. Do you remember Mr. Burke being there?

A. Yes, I do.

Q. Tell us, as well as you can, what Mr. Burke said.

A. Well, he was up there just for answering and giving advice on the law that was just passed.

Q. Did he say that?

A. He didn't say that, but that is what I am telling you.

Q. I am asking you, what did he say, Mr. Prodoehl, 2242 as well as you can remember?

A. Well, I remember one thing. I don't know if he started out with it, or if it was after he was through that he said, "As far as I am concerned, you can join any organization, any union."

Q. Did he name them?

A. He did.

Q. What did he name?

A. The A. F. of L., the C. I. O., or any association. Yes, he said, "Or any association."

Q. Do you remember questions being asked of Mr. Burke at that time?

A. I do.

Q. And he answered them, did he?

A. He did.

Q. Was any action taken by way of a motion or a resolution at that time, that you remember?

A. Not at all.

Q. And what is the fact as to whether there was considerable confusion around there?

A. Well, nobody seemed to run the meeting to start off with, and during the time that the meeting was to be called to order, one of the ones that started the meeting, or Greget, he wasn't there, so I thought well, he was supposed to run it,

so I got on the 'phone to find out if he was coming, and
2243 I called him up, and his wife said he left about an hour and a half.

Q. Now, Mr. Prodoehl, without going into that detail, that meeting adjourned without anything being done, as far as you know?

A. Yes, sir.

Q. Now, when did you attend the next meeting of any kind with regard to organization?

A. The men up in the Engineering Department—

Q. No. When was it?

A. The 21st.

Q. To refresh your recollection, Mr. Prodoehl, you refer to the Monday after the meeting on Sunday?

A. Well, then we had a meeting, the fellows upstairs wanted to find out—or, some of the men from upstairs were at this meeting.

Q. Yes.

A. Then they thought it would be best to find out for themselves what they could do, so we, some of the men upstairs, got in touch with Mr. Dunne, I think he is a judge here in Whitefish Bay.

Q. A lawyer?

A. Yes. And we had him over at the Republican Hotel.

Q. When was it?

A. That was on a Monday.

2244 Q. And, having in mind the fact that the Sunday meeting was the 18th, that would be the 19th of April?

A. Yes.

Q. What happened at that meeting?

A. Then most of the—I would say most of them, very few did not attend from the Engineering Department and the office, we had that meeting, that was just for the purpose of him explaining.

Q. By "him," you mean Mr. Dunne?

A. Mr. Dunne, explaining the Wisconsin law on the labor question, what we could do. They just wanted to know for themselves, have a quiet meeting. That is what it was.

Q. Was any action taken at that time?

A. Not at all, it was just for information.

Q. How was the hall paid for, if you know?

A. By collection. Mr. Dunne was reimbursed, I believe, also.

Q. When was the next meeting that you attended?

A. The next one was held a couple of days later, I believe it was on a Wednesday.

Q. And where was it held?

A. At Republican House.

Q. And who was in attendance generally?

A. That was just the same people that was at the other meeting, but this was called for the purpose of organiz-
2245 ing, just the Engineering Department and office.

Q. What action, if any, was taken at that time?

A. We called that meeting to get an opinion of what the rest of the people wanted to do, whether we should—we knew that Monday night we could form a union or an association or a club, just as office workers and draftsmen and clerks, to represent ourselves, and that is why this little meeting was called, to get an opinion of all the people, to have a vote.

Q. You mean you knew that from the advice given you by Mr. Dunne?

A. Correct.

Q. Was a vote taken on Wednesday?

A. There was.

Q. And what was the nature of the action?

A. On that particular vote, the question was whether we should form our own association, club or union to represent the office workers, or if we should join with the union being organized in the shop, which we knew of at that time.

Q. Was the question of joining the C. I. O. mentioned at this time?

A. I believe all of them were mentioned.

Q. So the question was, what should your group do with relation to the organization?

A. Yes.

2246 Q. What was the outcome of that, do you know?

A. Well, it was decided on that if we had representation in the union in the shop, we would go in with them, rather than have more than one organization representing us.

Q. By "the union in the shop," do you have reference to the Independent Union?

A. Yes, sir.

Q. What is the fact as to whether you attended the meeting at the North Side Auditorium on the 24th of April?

A. I was temporary chairman at that meeting.

Q. Do you know by whom that meeting was called?

A. By the incorporators.

Q. Who were they?
A. Mr. Wilson, Mr. Trost and Mr. Menz.
Q. What is the fact as to whether notice was sent out with reference to that meeting?
A. Yes, there was.
Q. Do you know who ordered the notices?
A. No, I do not.
Q. Now, at this meeting of the 24th, what is the fact as to whether articles of incorporation were read? Do you remember that?
A. I don't remember that, but I know that I read the by-laws, because there was a discussion as to the changing of those.
2247 Q. And were some suggestions made as to the change in the by-laws?
A. Yes.
Q. Do you remember any of those changes?
A. I don't know just exactly what changes were made.
Q. What is the fact as to whether an election was conducted at that meeting of the 24th?
A. There was an election.
Q. There was an election?
A. Yes.
Q. Who were elected?
A. They elected the directors.
Q. And how many directors were elected?
A. Thirteen.
Q. And how were they selected, if you know?
A. They were selected from each department in the plant. We tried to select a certain number from departments that had more men than other departments, so they were well represented.
Q. Do you remember the apportionment of those directors?
A. What was that?
(Question read by the reporter.)
Mr. Clark: Strike that question, please.
Q. (By Mr. Clark) How many directors from the various departments, do you know that?
2248 A. Some, not all.
Q. You were elected a director at that time, were you?
A. Yes, sir.
Q. From what department?

A. From the Engineering and Drafting.

Q. With reference to the directors, when did they first meet?

A. Right after the regular meeting, that was held that afternoon.

Q. And what did they proceed to do?

A. Well, the directors at that meeting got their instructions from the men at the regular meeting. We only act on what the members recommend.

Q. They elected officers, didn't they?

A. Yes.

Q. Who were elected to those offices?

A. Mr. Wilson was president; Mr. Adamski as treasurer; and Mr. Moebus as secretary; and myself as vice-president.

Q. There is some testimony here, Mr. Prodoehl, concerning the election of a man named Dearth. Do you recollect that?

A. Yes.

Q. What, if anything, was done about that?

A. After he was elected a director—this was before the directors had their meeting out in the hall, their regular meeting, some of the men said that he was supervisor
2249 or a foreman, and at the time of the election they didn't say anything; so in the directors' meeting, the president, he vacated his chair, and I was acting chairman, and made an objection to him being a member of the Independent Union, not only as a director.

Q. What, if anything, was done concerning the filling of that vacancy at that time?

A. We were to find out definitely if he was foreman, and if he was, he would be out, and at the next meeting we would elect another director from that department.

Q. What is the fact, if you know, as to whether another director was elected to take his place?

A. Yes, he was.

Q. Now, Mr. Prodoehl, do you feel that this organization, constituted as it is, is a capable representative of all of its members for the purpose of collective bargaining?

A. Yes, I do.

Q. Why do you say so?

A. First of all, we are one of the members working in the plant, and we know the conditions, and they can take it up with the directors individually, and we can look into it before we bring it at a Board meeting, or at a regular open meeting.

By "open meeting", I mean a regular monthly meeting.

Q. Do you feel that the directors, selected as they
2250 are, are in a position to know of the various problems in The Falk plant?

A. Yes.

Q. What is the fact as to whether your Board of Directors have had regular meetings since April?

A. We have a meeting of the Board of Directors after every monthly meeting, and if necessary, we call a special meeting.

Q. Have you had any of those special meetings?

A. Yes, sir.

Q. How many?

A. On an average of about once a month.

Q. What is the fact as to whether grievances have been presented by members to the Board of Directors?

A. Yes, there have been grievances. That is what we call our special meetings for.

Q. Did you have occasion to commence negotiations with the Falk Company for the purpose of entering into an agreement as to wage conditions, and other conditions?

A. We started to negotiate for working conditions, wage adjustments.

Q. As I understand it, those negotiations were not carried out?

A. They were not.

Q. Why?

A. That was due to the charges filed against the Falk Corporation.

2251 Q. Was it due to the charges filed against The Falk Corporation, or because Mr. Clark, of the Labor Board, suggested that they be suspended?

A. I believe it was in Mr. Clark's—in the letter sent to The Falk Corporation, he said that any agreement entered into with any party should be dropped.

Q. And a copy of that letter was sent to your union, was it?

A. Yes.

Trial Examiner Batten: Well, I presume if you do not happen to have a copy of the letter, that Mr. Rissman would agree that such a letter was sent?

Mr. Lamfrom: I have the original letter here, if you want the record complete.

Trial Examiner Batten: I thought they didn't have a copy of it, Mr. Lamfrom.

Mr. Rissman: Except the witness testified that a copy of the letter was sent to his organization, and no such copy was sent by the Regional Director. Such a copy was evidently received from the company.

The Witness: Yes, from the company counsel to our attorney.

Mr. Rissman: That's it.

Trial Examiner Batten: With that understanding,
2252 I presume you have no objection to agreeing that such a letter was sent?

The Witness: We knew about it.

Mr. Rissman: No.

Trial Examiner Batten: Well, that is sufficient.

Mr. Clark: I think that's all.

Cross-Examination.

Q. (By Mr. Rissman) Mr. Prodoehl, how long have you been a draftsman?

A. About eleven years.

Q. And all of that time were you ever a member of a labor organization?

A. No, sir.

Q. Do you know, at the present time, that there is a labor organization for draftsmen and engineers?

A. I do.

Q. Affiliated with the American Federation of Labor?

A. I do.

Q. And that there is such an organization for men who do your work affiliated with the C. I. O.?

A. No, I do not.

Q. But you did know about the former?

A. About the A. F. of L.?

Q. Yes.

A. Yes.

2253 Q. And you know also that in Milwaukee there is an Independent Engineers and Draftsman's Association?

A. I do not.

Q. Do you know of the Engineers and Draftsmen of the Allis-Chalmers Company?

A. I know of them, yes.

Q. And do you know they are organized into an independent union of engineers and draftsmen?

A. To take in all companies, or just their own?

Q. To take in all engineers and draftsmen.

A. No, I didn't know that.

Q. When you worked in the Machine Shop, how were you paid?

A. By the hour.

Q. And when you worked in the core room, how were you paid?

A. By the hour.

Q. How are you paid in your present work?

A. By the month.

Q. You have testified that because you have worked in the Machine Shop, in the core room; you have worked right down in the plant, you do not feel there is much difference between you and men who now work in the plant, do you?

A. Not at all.

Q. Do you know if other draftsmen in the Drafting and Engineering Department of The Falk Corporation who have not worked in the plant feel the same way as you do
2254 about it, or whether they feel there is a distinction?

A. There are very few draftsmen up in our department that have not worked in the shop.

Q. How about the engineers?

A. They also must work in the shop to obtain the knowledge necessary.

Q. Did they all start in the shop?

A. Yes, sir.

Q. And graduate to the drafting room?

A. Yes, sir.

Q. You spoke of the officers of the Independent Union. Can you name the officers again for us, and tell us, as closely as you know, from what department each officer comes? Start with the officers.

A. Officers, or directors?

Q. Start with the officers, and then go to the directors.

A. Mr. Wilson, president, he has charge of the Electrical Department and the power house and maintenance.

Q. No, I mean what department does Mr. Wilson work in?

A. Electrical Department.

Q. And the vice-president?

A. Mr. Prodoehl, he has charge of the—

Q. What department do you work in? Drafting Room?

A. Engineering Department.

2255 Q. And the next officer, what department he works in.

A. Secretary. That is Mr. Moebus. He is an expediter, he works in the shop.

Q. He is also commonly known among the men as a stock chaser?

A. If you call him such. He is not a stock chaser. He looks up jobs that are ready for shipment. That is not a stock chaser.

Q. He follows the jobs through?

A. Yes.

Q. And the next office?

A. Mr. Adamski works in the foundry; he is a piecework, making cores.

Q. And the others? Just go on through, and name them all.

A. I may miss some. Mr. Mitchka, he works in the Pattern Shop, he has charge of the Pattern Shop, just of the Pattern Shop and the Flask Carpenter Shop. And Mr. Trost, he is one of the directors, in the Machine Shop; and Mr. Martins works in Shop 3, he has charge of the men in Shop 3. Mr. Russetti—

Q. Would you be able to give it to us better if you had a list of the directors in front of you?

A. Well, I can count them; there are thirteen.

Mr. Russetti, he is a night man in the foundry, he has
2256 charge of the foundry. Mr. Stickman is a welder, he has charge of the welders. Mr. Vanderhoe, he has charge of the yard gang, he is a truck driver.

There is one more, he works in the Gear Department.

Q. (By Trial Examiner Batten) I suppose you mean by "charge", representing the union, not representing the Falk Company?

A. That is correct.

Q. (By Mr. Rissman) None of these men you name are supervisory employees of the company?

A. No, or they could not become members of our organization.

Q. They are all employees being paid either a monthly or hourly wage, or salary?

A. Everyone except myself. And Mr. Ewart is a director that has charge of the office.

Q. You say that Mr. Dearth was originally elected to some office?

A. He was.
Q. To what office?
A. Foundry, nights.
Q. What kind of work does Mr. Dearth do in the shop?
A. He has charge of cleaning the castings. He is subforeman, he is not the foreman.
Q. So, in this connection, when you say he has charge, you mean he is in a supervisory position?
2257 A. He is supervising, I would call him a sub-foreman, he has charge of men cleaning castings in the foundry.
Q. (By Trial Examiner Batten) Who took his place?
A. I believe Mr. Russetti did.
Q. (By Mr. Rissman) I hand you herewith Board's Exhibit No. 27, being the by-laws of the independent Union of Falk Employees, and direct your attention to Article 4, entitled, "Vacancies", and ask you to read that to yourself, please.
A. Yes.
Q. Was Mr. Dearth's successor elected in conformance with that article?
A. We did talk to the men representing the foundry.
Q. But he was elected according to the provisions of this article?
A. I don't remember if he was elected by a vote, or if he was elected unanimously.
Q. This article provides that:
"In case of death, disability, resignation, or otherwise, of one or more of the officers, or directors, the remaining directors, although less than a quorum, shall fill the vacancies for the unexpired term."
So the directors voted for a successors, didn't they?
A. I talked—we talked to the men from the foundry, because we just thought we started the organization, and,
2257½ to give them a fair trial, we thought we would see who they wanted to represent them.
Q. And that procedure you have just described is in accordance with the second paragraph, that says, in part:
"Before a vacancy in the Board is filled, the remaining directors will consult with the members of the department where the retiring director was employed and obtain suggestions from those members as to who shall be appointed to fill such vacancy."?
A. Yes.

Q. So that the successor was elected by the remaining directors, after consulting with the members in the department?

A. Yes.

Q. But there was no regular vote taken at any meeting of your union for the election of a successor to Mr. Dearth?

A. I don't know whether there was an election taken or not.

Q. Then you don't know how Mr. Dearth's successor was elected?

A. Yes, as far as they talked it over with the men, and he was named. Whether he was voted or whether he was elected unanimously, I don't recall.

Q. At any rate, the matter was never taken up at any regular or special meeting of the members of the union?

2258 A. I don't know. Just to make it a little clearer, at the first—or at the second meeting, I was at the door, and I wasn't in the hall, so that is why I can't recall.

Q. At the second meeting, was Dearth a director?

A. He wasn't a director. He was out the first meeting of the Board of Directors.

Q. And do you know if the new man was the director at the second meeting of the Board of Directors?

A. The new man?

Q. The man appointed or elected?

A. Russetti? I don't recall if he was there at the time or not.

Q. Was there any regular or special meeting of employees, members of your organization, between the first directors' meeting and the second directors' meeting?

A. Yes, there was.

Q. And that is the meeting where you say you stood at the door?

A. No, this was at the regular meeting, that we hold once a month.

Q. Was there any action taken at that meeting for the election of a successor to Mr. Dearth?

A. That was taken up at the special directors' meeting, after our regular meeting.

Mr. Clark: I think the minutes will clear that up.

2259 Mr. Rissman: What?

Mr. Clark: I think the minutes will clear that up.

Q. (By Mr. Rissman) How were you called down to this meeting under the hospital, Mr. Prodoehl?

A. I don't know; just somebody called up and said they wanted to see me below the hospital. That's all that I know.

Q. Was it on the telephone someone called?
A. Yes.
Q. Did they speak to you?
A. They spoke to the one that answered the 'phone.
Q. And who answered the 'phone?
A. We have three 'phones upstairs, or four—five. I believe we have six now; and if one is busy, the other one is not, and the man that is next to that 'phone answers, and he yells the message.
Q. And the message was for you to go downstairs?
A. That's right.
Q. You didn't know for what purpose you were going down?
A. No, sir.
Q. What time was that?
A. It was in the afternoon, that's all that I remember.
Q. Do you remember the day of the week?
A. Yes, on the 15th, Thursday, the 15th, that is when it was.
2260 Q. Do you remember any of the conversation you heard there at that time?
A. No. I didn't know the purpose of the meeting to start with. They already had a couple of meetings after I found it out, the first time I knew they were holding meetings below the hospital.
Q. Do you recall when you were called down there?
A. Yes.
Q. When you came into the meeting, did you talk to anybody?
A. Yes.
Q. To whom?
A. I don't remember, at all.
Q. What did you talk about?
A. What?
Q. What did you say, what conversation took place?
A. "What is this meeting for?"
Q. What did this person say to you?
A. "They are trying to form a union."
Q. And what did you say?
A. I don't remember now.
Q. You don't remember who that person was?
A. No, I didn't even know how many was at the meeting.
Q. So when you came down there, you didn't know what kind of a union they were trying to form?

A. Not at all.

2261 Q. You didn't know whether it might have been the C. I. O., or A. F. of L., or any kind?

A. No, I didn't.

Q. When did you first find out what kind of a union was being formed?

A. The impression that I got at that meeting was that they wanted to form an independent union, and they had—it seemed that a few of the men were carrying the whole thing.

Q. Which men did it seem were doing that?

A. Mr. Wolf and Mr. Greget and Mr. Landry, and I remember Mitchka and another man from his department, I don't recall his name, and everything was all din, they just were talking it over amongst themselves, how they would go about it, and I don't recall any of the conversation.

The only thing I did was, I sat and listened, because I had just come into the place.

Q. Did anybody say anything about the Drafting or Engineering Department?

A. Yes. When I came down there, they said they would like to have somebody from there represent the Engineering Department.

Q. What did you say?

A. All right.

Q. You said you would represent the Engineering Department?

2262 A. I said, "All right, I will stay here."

Q. After you left that meeting, what did you do?

A. Nothing, because I didn't know anything at all.

Q. When did you attend the next meeting?

A. The following day.

Q. How were you notified of that?

A. By a 'phone call.

Q. After you came back from this meeting on the 15th, did you speak to anybody else in the Engineering and Drafting Department about it?

A. No.

Q. Prior to the meeting of the 15th, had you ever discussed with any of your fellow-employees in your department the organization of a union?

A. No, sir.

Q. Or membership in a union?

A. No, sir.

Q. Or collective bargaining in any form with your employer?

A. No, sir.
Q. Had any of them ever discussed it with you?
A. No, sir.
Q. And you did not discuss it between the meetings of the 15th and the 16th?
A. No, I did not.
Q. And you came back to the meeting on the 16th?
2263 A. I was called down again.
Q. In response to a telephone call?
A. Yes.
Q. Do you know who called you?
A. No.
Q. Tell us where the meeting was on the 16th, and what occurred.
A. At the same place.
Q. Tell us where.
A. Below the hospital.
Q. Yes.
A. Oh, from the conversation, it was that they came back from the attorney, and they went to the attorney, and all of that, and certain men wanted to know what happened. I wasn't interested in the meeting, because it was the second time I was ever called or talked any union, or starting any organization.
Q. It was all Greek to you?
A. Yes, it was.
Q. Did you take part in any of the discussion?
A. No, I didn't. They asked my opinion at times, I remember that, and I said, "I don't know."
Q. And was it known that you were there as a representative of the Drafting or Engineering Department?
A. That is what they told me, they wanted some-
2264 body to represent the draftsmen.
Q. Did you attend any other meetings after that?
A. I attended the 18th.
Q. After the meeting of the 16th, did you ever speak to any of your fellow-employees in your department?
A. Yes.
Q. About these meetings?
A. I had a better idea of what they were doing.
Q. To whom did you speak?
A. I don't recall the particular person or persons who I talked to.
Q. Did you speak to more than one?

A. I think I did.
Q. How many did you speak to?
A. I don't know.
Q. How many men are employed in the Engineering Department, approximately?
A. Approximately about seventy.
Q. Seventy?
A. Seventy.
Q. And you say you spoke to a few of them?
A. Quite a few, yes. They asked me, they got wind of it, I don't know where, or maybe I said something, and then one would talk to the other one, and before long, before I knew it, this fellow and that fellow was stopping me and ask-
2265 ing me all about it, and I said I didn't know anything.
Q. Did you ever gather them altogether, all seventy, or a great number of them, and explain to them what these meetings were all about?
A. The meetings of the 15th and 16th?
Q. That's right.
A. I didn't.
Q. Did you ever talk to any great number of them and explain to them what it was all about?
A. No, sir.
Q. Did you ever explain to the men that you had been appointed a representative of the drafting and engineering department?
Mr. Clark: I object to that, as not being a statement of the fact.
Q. (By Mr. Rissman) Or designated as the representative of those departments?
Mr. Clark: I still object.
Q. (By Trial Examiner Batten) I think the evidence is here that prior to any meeting of the Independent Union, they had requested you to represent that department?
A. When I came down to that meeting, then they wanted to have somebody to represent the Engineering Department.
Q. (By Mr. Rissman) Did you ever tell all your fellow-engineers, or any great number of them, engineers and
2266 draftsmen, that the people at these meetings said they wanted you to represent the Engineering and Drafting Department?
A. I didn't tell them that I was to represent them.
Q. What did you tell them?

A. They called me down, they wanted some representation from the Engineering Department at these meetings.

Q. Tell some more of the conversation you had with some of these men after the meeting of the 16th.

A. I don't recall any conversation at all, I don't remember what I said or what they said, at all.

Q. You say the men learned that the union was being formed—you say they got wind of it up there?

A. They got wind of it, either through me—I don't know how they got it, I didn't know they were holding a meeting from the first Monday through that week to the 16th, until I was called down on the 16th.

Q. Did the men in your Drafting and Engineering Department manifest an interest in this organization that was being formed?

A. Yes, they did.

Q. In what way?

A. There was quite a few of them up at that meeting on the 18th.

Q. How were they notified about that meeting?

2267 A. A circular came around.

Q. How many of them were at the meeting of the 18th, do you know?

A. I don't know the exact count; just from our department, about twenty of them.

Q. Did you see that many there?

A. Yes.

Q. Did you make it your business to go around and see how many men from the Engineering Department were present at the meeting of the 18th?

A. No.

Q. Prior to the 18th, tell us some of the discussion the men had with you regarding their joining a union, or designating someone to represent them for collective bargaining?

A. They didn't discuss it at all.

Q. When did you and the men in your department first become aware of the necessity of an agent for collective bargaining?

A. Interest was aroused in it after this meeting that was held on the 18th.

Q. What occurred at the meeting of the 18th that aroused the interest?

A. Well, all the men that were there, if they wanted—

if they were going to have any organization, they wanted
2268 to be sure they had some representation in it, and they didn't know anything about the law. That is why we called a meeting of the men, and got Mr. Dunne to hold this at the Republican House, to find out more about it, and what they could do.

Q. What were the reasons, if you know, that prompted the men to decide they would go along with this union that was being formed in the shop, rather than have a union of their own?

A. Well, that was all talked over at the meeting, the second meeting we held at the Republican House, and it was voted on that if we could have a representation in this union that was being formed, then we would go along with them, rather than have our own individual unit.

Q. Why did the men feel they wanted a guarantee of representation in this new union, before they would consent to going along with them?

Mr. Clark: I don't think there is anything about a guarantee. I object to it.

The Witness: No, nobody guaranteed us anything.

Q. (By Mr. Rissman) Why did the men feel they wanted to know they would have representation on this new union before they would consent to going with it?

A. If we got representation, then they would all go along, or else they would all pull out again.

2269 Q. Why did they want representation?

A. They know their ends of it a lot better than anybody else out in the shop does.

Q. Then, is it correct to say that the reason they wanted to be assured of representation was because they felt their problems could best be handled by someone in their own department?

A. Correct.

Mr. Rissman: That's all.

Mr. Clark: That's all, Mr. Prodoehl.

Trial Examiner Batten: That's all.

(Witness excused.)

Trial Examiner Batten: Oh, pardon me, Mr. Engelhard?

Mr. Engelhard: No, we have no questions.

WILLIAM EWART, a witness called for and on behalf of the Independent Union of Falk Employees, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Clark) Will you state your name?
A. William Ewart.
Q. How old a man are you?
A. Forty-six.
Q. And where do you live?
A. I am a little bit nervous. You will have to ex-
2270 cuse me. 2449 LeFeber Avenue, Wauwatosa.
Q. You are a married man, are you?
A. Yes, sir.
Q. Do you have a family?
A. Yes.
Q. How many?
A. Three; one dead.
Q. You are employed at the Falk plant?
A. Yes.
Q. How long have you been employed there?
A. Since 1915.
Q. And what is your present position?
A. I am in the Order Department.
Q. In the office?
A. Yes.
Q. You are a member of the Independent Union of Falk Employees, are you?
A. Yes.
Q. And one of the directors?
A. Yes.
Q. Were you at a meeting at the Republican House on April 19th, at which members of the office and the Engineering and Drafting Room were present?
A. Yes.
Q. Tell us what happened at that meeting.
2271 A. Well, we got together and decided we wanted to have someone to explain the law to us, so we got hold of an attorney, and he explained the law to us exactly as to what we could do.
Q. Who was the attorney?
A. Mr. Dunne, I believe it was, from—

Q. Whitefish Bay?
A. Whitefish Bay, yes.
Q. And tell us what happened at that meeting.
A. Well, he explained the law to us, the State law and the ederal law, and told us what we could do, and what we had right to do, and what we didn't have a right to do; so, after etting all the points, some questions were asked, and we ad-ourned.
Q. Do you remember any of the questions that were sked?
A. Nothing in particular, outside of it was brought up if e could form an independent union of our own; but I don't ecall all the questions.
Q. Do you remember a collection being taken up?
A. Yes.
Q. Now, Mr. Ewart, what is the fact as to whether you ere at the meeting at the North Side Auditorium on April 8th?
A. April 18th, I wasn't there.
Q. You were not there?
A. No.
272 Q. What is the fact as to whether you were at the meeting on the 24th?
A. Yes, I was at the meeting on the 24th.
Q. Now, to get back, after the meeting of Monday night, ere you at any other meetings that week?
A. Yes, we had a meeting on Wednesday night.
Q. What happened there, as well as you call?
A. The whole office and Engineering Department decided at they would go and join up with the Independent Union.
Q. Were the various organizations discussed that night?
A. Oh, yes.
Q. Was discussion had as to joining the C. I. O.?
A. Yes, that was mentioned, several fellows, I don't know e members of it, but they talked about it.
Q. Was an A. F. of L. organization of any kind men-ned?
A. Yes, that was mentioned rather strongly, too.
Q. Were arguments brought forth in favor of each of se organizations?
A. Well, I don't recall no argument, but there were some ught forth and some brought out against, pro and con.
Q. What action was taken at that meeting, that you re-nber?

A. They took a vote to join up with the Independent Union, with the shop fellows.

Q. Was any reason given?

2273 A. No, there was no particular reason, outside of just stating that it would be better to have one union for the whole plant, rather than bust up in small groups.

Q. Now, at the meeting of the 24th of April, at the North Side Auditorium, what happened there, if you remember?

A. Well, on the 24th, we got together, and we had a regular meeting, and officers were elected, and so forth.

Q. Directors?

A. Directors, yes.

Q. Were you elected a director at that time?

A. Yes.

Q. By what department?

A. By the office.

Q. (By Examiner Batten) Do I understand that only your department elected you, or the whole membership?

A. No, just our department.

Q. Just your department elected you?

A. Yes.

Q. (By Mr. Clark) Your name was presented to the whole membership after you were elected by your department?

A. Yes.

Trial Examiner Batten: He was elected that night, Mr. Clark, is that it?

Mr. Clark: Yes.

Q. (By Mr. Clark) As I understand it, Mr. Ewart,
2274 these various departments had caucuses, and selected their representative, and then their name was presented to the entire group?

A. Yes.

Q. And the entire group then elected you as a director?

A. Yes.

Q. What is the fact as to whether the directors had a meeting that day?

A. Yes, we had a meeting right after that meeting, that was the first meeting we had.

Q. And officers were elected?

A. Yes.

Q. Now, was it generally known that you were the representative of the office for the purpose of presenting grievances?

A. Yes.
Q. How do you know that?
A. Well, I had plenty of them, I should know.
Q. You had plenty of grievances presented to you?
A. Yes.
Q. From people that you represented on the Board?
A. Yes.
Q. And what was the nature of some of those grievances?
A. Well, some of them may sound a little bit out of line, but one, for instance, was during that hot spell we had,
2275 some of them wanted hot lunch to be served, and some of them wanted cold lunches. And another grievance—
Q. What is the fact as to wage grievances being presented to you?
A. Another grievance was with the fellows in the Cost Department.
Q. What was the nature of it?
A. They claimed they were under-rated, according to fellows doing the same job in the plant.
Q. And what, if anything, was done about it?
A. Well, I took it up with the boss.
Q. Any results?
A. Yes, we had a little result. They decided to go through it and make a regular study, as to what is in line, and the first fellow we found out of line, he got his raise, and was brought back up in line.
Q. And that matter is now being investigated, is it?
A. Yes.
Q. And, when the Labor Board lifts its suspension, you expect to go ahead with that negotiation?
A. Yes.
Trial Examiner Batten: Now, just a minute, Mr. Clark. Has the Labor Board got this thing hanging in the air somewhere?
Mr. Clark: Yes.
2276 Mr. Rissman: What Labor Board?
Mr. Clark: The National Labor Board.
Mr. Rissman: May I hear the question? I didn't hear it.
Trial Examiner Batten: My understanding was, they wrote this letter, requesting that no contract be entered into.
Mr. Lamfrom: No. It went a little farther.
Trial Examiner Batten: Did that letter stop all?
Mr. Clark: We understood it that way.
Mr. Lamfrom: May I read my letter, and the reply of Mr.

Clark, just so you may have it? I would like to keep the letter in my correspondence file. For that reason, I would like to be permitted to read it to the Examiner, just for the Examiner's information of what that matter consists of. It will not take but a minute to read it.

Trial Examiner Batten: Go ahead.

Mr. Lamfrom: This is on the stationery of the National Labor Relations Board, Twelfth Region, Brumder Building, Milwaukee, Wisconsin.

"June 8, 1937.

Re: Falk Corporation, XII-C-57.

"Mr. Harold Falk, Vice-President and Works Manager, of The Falk Corporation,
3001 West Canal Street, Milwaukee, Wisconsin.

2277 "Dear Mr. Falk:

"This is to advise you that a formal charge has been filed with this Board by the Amalgamated Association of Iron, Steel & Tin Workers of North America that your company, through its officers and agents, has dominated and is giving insistence to the formation of an alleged independent organization known as the Independent Union of Falk Employees, and that through coercion and intimidation a great number of your employees have been forced to become members of this organization.

"It is my understanding that your organization applied to the Wisconsin Labor Relations Board for recognition as a legitimate independent organization, and that the State Board did refuse to grant such authorization because they were not satisfied that it was an independent organization not controlled by management.

"In view of this development, it is my duty to inform you that until a hearing is held by this Board in regard to the charges above mentioned, that any agreement entered into with this organization by The Falk Corporation will not be considered legal and binding either by the State Board or by the National Labor Relations Board.

2278 "I would advise you that you do not attempt to reach an agreement with any group of your employees until after the hearing, which will be held in the very near future, and of which you will be properly advised through this office.

"Very truly yours,
"Nathaniel S. Clark."

It has his signature, and then, typewritten, "Nathaniel S. Clark, Director, Twelfth Region."

This letter was handed over to me by The Falk Corporation, and I replied as follows, on June 12, addressing it:

"Mr. Nathaniel S. Clark,
"Director, Twelfth Region,
"National Labor Relations Board,
"Brumder Building, Milwaukee, Wisconsin.

"In re: Falk Corporation, XII-C-57.

"Dear Mr. Clark:

"Your letter of the 8th instant to Mr. Harold Falk, Vice-President and Works Manager of The Falk Corporation, concerning charges filed by the Amalgamated Association of Iron, Steel & Tin Workers of North America, has been turned over to me for attention by Mr. Falk.

"Naturally, The Falk Corporation will be prepared to meet these charges.

"You state in your letter that it is your under-2279 standing that an organization called the Independent Union of Falk Employees applied to the Wisconsin Labor Relations Board for recognition, and that the State Board refused to grant such authorization because they were not satisfied that it was an independent organization not controlled by management. I communicated with Mr. Frank Burke, attorney, of this city, who represents the Independent Union of Falk Employees, and he advises me that there has been no decision by the Wisconsin Labor Relations Board on the application of the Independent Union of Falk Employees as a union under the Wisconsin Labor Relations Act.

"I am sure that the last paragraph of your letter, based on the fact that the Wisconsin Labor Relations Board made a holding relative to this organization does not reach a conclusion justified by the facts or the law.

"Yours very truly."

This, now, finishes it. There is another letter from Mr. Clark. This will give the whole incident.

Mr. Rissman: I thought we just wanted this letter of Mr. Clark?

Trial Examiner Batten: Does this next letter have any reference to it?

Mr. Lamfrom: This completes it, if the Examiner please:

2280 "National Labor Relations Board
Twelfth Region
Brumder Building
Milwaukee, Wisconsin.

June 15, 1937.

"Mr. Leon B. Lamfrom,
1416 Bankers Building,
208 East Wisconsin Avenue,
Milwaukee, Wisconsin.

"In Re: Falk Corporation, XII-C-57.

"Dear Mr. Lamfrom:

"Your letter of the 12th instant, stating that The Falk Corporation have turned my letter over to you has been received, and as we stated to you over the telephone, perhaps the charge contained in the last paragraph of my letter was based on hearsay evidence rather than knowledge of same, I retract that portion of my letter, but definitely a hearing will be arranged and held on the charges as stated in the body of my letter.

"As you are the attorney for The Falk Corporation in this matter, you will be duly notified when and where said hearing will take place sufficient time in advance to prepare your case. You will also be supplied with a copy of the charge and the complaint when issued.

"Yours very truly,

"Nathaniel S. Clark",

2281 and, then, in typewriting, "Nathaniel S. Clark, Director, Twelfth Region."

Trial Examiner Batten: We will take a short recess.

(A short recess was thereupon taken.)

Mr. Rissman: May I hear the last question and answer, please?

(Last question and answer read.)

Mr. Rissman: I move that the question and answer be stricken, if the Examiner please, as being improper, and not based upon any facts either in the record or out of the record. There is no suspension by the Board.

Q. (By Trial Examiner Batten) Was it your understanding that the Labor Board had issued an instruction which prevented the directors or you from proceeding to handle any grievances of the men?

A. No. There was no kind of a doubt about it. I didn't question it.

Q. Did you understand that letter to mean that you could not carry on any business with the corporation because of that letter?

A. No. I have been carrying it on since then.

Q. What was your idea of what this letter meant?

A. Well, the letter, it seems to me, my idea was that we should go ahead and finish up what we started, that was about all.

2282 Q. Did this letter mean to you that you were not to enter into any formal agreement pending this hearing, is that what it meant to you?

A. Well, I felt that way about it.

Q. You have continued to handle matters that came to your attention?

A. Handle matters.

Q. Haven't you?

A. Yes, sir.

Trial Examiner Batten: It may stand, I think.

Q. (By Mr. Clark) Now. Mr. Ewart, for the purpose of saving time, I will ask you this question: Were you in the room when Mr. Prodoehl testified concerning the meeting of April 24th?

A. Yes.

Q. If you were asked the same questions, would your answers be about the same as his, to those questions?

A. Yes, they would be just about the same.

Trial Examiner Batten: Mr. Clark, might I ask you, do I recall correctly that this witness said something about attending one of those meetings that the previous witness referred to on the 15th or 16th?

Mr. Clark: No, he didn't.

The Witness: No, I didn't attend none until Monday.

Q. (By Mr. Clark) You didn't attend any meeting 2283 prior to the 19th, at the Republican House?

A. Yes.

Q. As I understand it, is that right?

A. Yes.

Mr. Clark: I think that's all.

Q. (By Trial Examiner Batten) What time was this meeting at the Republican House?

A. It was on a Monday evening.

Q. In the evening?

A. Around that time, about 7:30.

Q. Did you ever do any work in behalf of this work of this organization during working hours?

A. Well, I have talked about grievances, and so forth.

Q. Yes, I understand; but I mean before this meeting,—what was the meeting that you organized at, Mr. Clark?

Mr. Clark: The 24th.

Q. (By Trial Examiner Batten) I mean, prior to the 24th, did you do any work in behalf of this organization during working hours?

A. No, not prior to the 24th, no.

Q. Did you discuss it with other employees?

A. Oh, yes.

Q. During working hours?

A. Yes.

Q. Did any foreman ever tell you that you couldn't?

2284 A. Couldn't what?

Q. Couldn't talk to other employees about it.

A. I understood we couldn't.

Q. My question was, did any of them ever tell you that you couldn't?

A. No. I understood that from the information that we had heard as to that, and the questions that were asked at that meeting, I understood that.

Q. (By Mr. Clark) You understood you were not to talk about any organization—

A. Not to talk about it.

Q. (Continuing) —during working hours?

A. Yes.

Q. If you did talk about it, it was on the sly?

A. Yes.

Q. (By Trial Examiner Batten) Who told you that you shouldn't?

A. There were several questions brought up from the lawyer.

Q. You mean, Mr. Dunne?

A. Yes, that was brought up during the questioning.

Q. I mean, did any foreman or superintendent or man in charge of your department—

A. No.

Q. (Continuing) —ever tell you that you couldn't?

A. No, not at the meeting of the 24th.

2285 Q. When did they start to solicit members of the Independent Union?

A. Well, I don't know when they started. I know when I started.

Q. When did you start?

A. It was before the meeting down at the Republican Hotel, on Wednesday evening.

Q. Let's see. That would be the Wednesday before the 24th?

A. Yes.

Q. When did you get the application?

A. I don't know who handed it to me.

Q. You mean somebody gave you some?

A. Yes.

Q. During working hours?

A. No, that was in the evening.

Q. Did you ever solicit any members or hand out any applications during working hours?

A. No.

Q. Did you ever talk to anybody about joining during working hours?

A. Yes, I have.

Trial Examiner Batten: That's all.

Cross-Examination.

Q. (By Mr. Rissman) When was the first time you 2286 heard that office workers could join the Independent Union?

A. Well, there was a question as to—I think it was on a Monday, before the meeting at the Republican Hotel.

Q. When was the first time that you ever attended any meeting of the Independent Union?

A. Well, the Independent Union was on the 24th, a Saturday afternoon.

Q. How did you know about the meeting at the Republican Hotel?

A. I was notified.

Q. By whom?

A. I wouldn't swear, some of the boys said we would get together that night and have the Wagner law explained.

Q. Who said that to you?

A. I don't recall just who.

Q. Somebody in your department?

A. Yes.

Q. Had you ever discussed the Wagner Act with any of your fellow-employees before that time?

A. No, I didn't know there was such a thing.

Q. Had you ever discussed labor organizations with them?

A. We had talked labor organization, yes.

Q. I don't mean in general conversation. I mean, had you ever talked about forming a labor organization for the office workers of the Falk employees?

2287 A. Before that time?

Q. Yes.

A. No, not I.

Q. What did you say when this person asked them to come to a meeting to discuss the Wagner Act?

A. Well, I said, "Sure, I will be there."

Q. You didn't know what the Wagner Act was, did you?

A. No.

Q. Did you know what you were going to the meeting for?

A. I wanted to find out, that's all.

Q. And you didn't know whether the Wagner Act applied to labor relations or the speed of automobiles, did you?

A. Oh, well, I knew it applied to labor relations, but what labor relations I didn't know.

Q. Why did you become interested in wanting to know what the Wagner Act meant at that time?

A. Well, you know, at such a time there was talk of the Wagner Act, and the law.

Q. (By Trial Examiner Batten) And unions?

A. Yes.

Q. And the C. I. O.?

A. Sure.

Q. A. F. of L., Independent Union?

A. I didn't know about it.

Trial Examiner Batten: And Works Council.

2288 Q. (By Mr. Rissman) You started to name before some of the grievances you have taken up at the Board of Directors of the Independent Union. Do you remember?

A. Yes.

Q. You said something about hot and cold lunches?

A. Oh, yes.

Q. Tell us some more, what are some of the other grievances you took up?

Trial Examiner Batten: Do you consider it material to the issues in this case, as to what grievances they took up?

Mr. Rissman: It is material to the issues of this case, Mr. Examiner, to indicate that the so-called issues of the Independent Union have nothing whatsoever to do with collective bargaining.

Trial Examiner Batten: Hasn't the matter of a hot or cold lunch something to do with working conditions?

Mr. Rissman: Maybe I am mistaken.

Trial Examiner Batten: No, I am asking you.

Q. (By Mr. Rissman) Tell us some of the other grievances.

A. The fellows in the Cost Department figured they were not in line, as far as salaries were concerned, as fellows in the other part of the plant doing the same class of work, so I went to see the boss about it, so he agreed to take it up and find out what could be done. And—

2289 Q. When were these grievances taken up?

Mr. Engelhard: Let him finish. He was saying "and".

Mr. Rissman: I am sorry.

Q. (By Mr. Rissman.) Did you finish your answer?

A. It was taken up with the management, and they agreed to make a regular study of it, and see who was out of line, and so forth, like that.

Q. When were these grievances presented to the management?

A. Well, it was presentd to the meeting, after the general meeting in May, the office group got together and told me they had grievances. I said, "All right, let's present them."

Q. Were the grievances taken up before the Board of Directors' meeting of your union?

A. No, they were not taken up, not before they were presented to me:

Q. Just tell us what happened. They were presented to you by the individuals?

A. Yes.

Q. Did you take them up with the management?

A. Yes, I took them up with the management the first thing Monday morning.

Q. Who else accompanied you when you took them up with the management, or did you go by yourself?

A. Well, I wouldn't call it the management. I took 2290 it up with the boss of that department. That is what I mean by "management".

Q. You took that up with him yourself?
A. Yes.
Q. You didn't take it to any committee of your union?
A. No, not right away, no.
Q. When did you take it to the committee of the union?
A. Well, we talked over, I think it was the next—we had a meeting together, a special meeting, and we just talked about it a little, that's all, we decided we would thresh it out ourselves, and if it got too bad, we would take it up at the regular meeting.
Q. Do you know how many office workers there are in the Falk Corporation?
A. Well, I wouldn't be sure how many there are. We had about seventeen in the union.
Q. How many of those officers voted for you, for a director, how many of those office workers?
A. Oh, I don't know, it was kind of a close race, and I think we were in a three-cornered tie, if I remember right, and split up. I don't recall just how many voted.
Q. How many votes were cast altogether from the office department?
A. Oh, I don't think I could tell you. I didn't count the votes.
2291 Q. At this meeting at the Republican Hotel, did the employees of the office department decide they would go in with the Independent Union of Falk Employees if they could have a representative of their own?
A. Yes, that was the general tenor.
Q. Do you know why they wanted a representative of their own?
A. The only reason was that the office had a representative in the Works Council then, and we felt that the Works Council had been a good thing, and if that was going to be, we wanted to have a share of it.
Mr. Rissman: That's all.

Redirect Examination.

Q. (By Mr. Clark) With reference to this reclassification, did you take that matter up with Mr. Richard Falk?
A. Yes.
Q. And what did he say to you?
A. Well, he is making a study of the thing right now.
Q. Do you know that he is doing it?

A. Yes. The fellows got a little bit nervous, and I told im he would have to give me something in black and white, o I could show it to the fellows, and he sent me this letter o I could show it around to the fellows.

Q. He was making a study of conditions and wage scales, and things like that?

292 A. Yes.

Q. (By Trial Examiner Batten) I was going to ask ou the approximate number of people that were present at he meeting of the 24th.

A. About 400.

Trial Examiner Batten: Are you going to show that by ome other witness?

Mr. Clark: Yes.

(Witness excused.)

ALBERT PRODOEHL, a witness called by and on behalf of the Independent Union of Falk Employees, having been previously duly sworn, resumed and testified further as follows:

Examination by the Chair.

Q. (By Trial Examiner Batten) You spoke of attending meeting at the hospital on the 15th and 16th, did you?

A. I did.

Q. That was during working hours?

A. It was.

Q. Did you ever have any money deducted from your check or attending those meetings?

A. I did not.

Q. You received your full pay?

A. Yes.

Q. Who else did you say was at the meeting of the

293 15th, that you remember.

A. Greget, and Wolf, Wilfer, and Mitchka; quite a w others. Those are the only ones that I remember.

Q. Who do you remember being at the meeting of the 6th?

A. I believe the same ones were there again. I didn't ke very good notice.

Q. There is testimony here—do you remember what day the week it was you attended these two meetings?

A. I was positive it was the 15th and the 16th.
Q. Do you remember what day of the week?
A. No, I don't know.
Q. Now, there is testimony here that there was one meeting on the 12th, that is Monday; and two meetings on the 13th, that was Tuesday; and one meeting on the 14th, that is Wednesday; and according to your statement, there must have been, then, a meeting on Thursday and Friday. That is the reason I wondered if you recalled the days. But no matter what date the meeting was on, you attended meetings on two days?
A. I attended two meetings, that's all I know of.
Q. And no deduction was made from your check for the time you spent in those meetings?
A. Not that I know of.
Q. You would know if your check was short, wouldn't you?
A. I get paid by the month, and if I work overtime, I
2294 get paid by the hour.
Q. I say, as far as you know, was any deduction ever made?
A. I don't think I was deducted.

Redirect Examination.

Q. (By Mr. Clark) It is not unusual for you to be away from your usual place of employment for a considerable period of time?
A. It is not.
Q. The boys in the office have occasion, at least sometimes, to go downtown, for instance?
A. They have.
Q. They leave their place of business, and no one knows they are away from it?
A. Some of the fellows always know where you are going, you have got to leave notice.
Q. But it is not unusual to be away from your place of work?
A. It is not, no.
Q. Without it being deducted?
A. No.
Q. You don't punch cards in and out, when you come and go?
A. We punch in the morning and evening.
Q. But if you go out during the day, you don't punch?

A. We do not.

Q. (By Trial Examiner Batten) When you go out downtown during the day, on your personal business, do you
2295 check out?

A. We do not.

Q. You just tell the foreman you are going out?

A. If he wants to know, we do it, and if he doesn't—

Q. You don't?

A. No, sir.

Recross Examination.

Q. (By Mr. Rissman) Are there ever deductions while you are on personal business?

A. There are.

Q. On this first meeting of the 15th, I believe you said—

A. Yes, which I believe it is.

Q. Well, assume that is the date.

A. Yes.

Q. You didn't know why you were being called?

A. No. The only thing they told me, to go below the hospital, that was all.

Q. Had you ever gone below the hospital for any purpose before?

A. Not at all. That was the first time I was there.

Q. Were you surprised to receive this call to go below the hospital?

A. I didn't know what they wanted.

Q. Did you know who was going to be there?

A. I did not.

2296 Q. What thoughts, if any, did you have when you received this call?

Trial Examiner Batten: I see no value in this at all. I said to call this man back and ask him one question, and I am not going to open up a whole general examination again. I see no reason for that. The man has been examined and cross-examined. He is back here for only one purpose.

Mr. Rissman: May he answer this question?

Trial Examiner Batten: What was the question?

(Question read by the reporter.)

The Witness: I don't remember. I am called out to the shop four or five times a day. It is nothing unusual for me to be called out.

Mr. Rissman: That's all.

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Trial Examiner Batten: Mr. Engelhard?
Mr. Engelhard: No questions.
(Witness excused.)

CARL MENZ, a witness called for and on behalf of the Independent Union of Falk Employees, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Clark) Your name is Carl Menz?
A. Yes.
Q. M-e-n-z?
2297 A. Yes.
Q. How old a man are you?
A. Forty-four.
Q. You are employed at the Falk plant, are you?
A. Yes.
Q. How long have you been employed there?
A. About a year and seven months.
Q. You are a machinist by trade?
A. I am.
Q. And you have been working in the yard out there at the Falk plant?
A. Yes, sir.
Q. You are a married man, are you?
A. Yes, sir.
Q. Do you have a family?
A. Yes, sir.
Q. With reference to the Independent Union of Falk Employees, when did you first know about it?
A. On the 18th, the 18th of April, when they had the open meeting.
Q. On the 18th of April. You have reference to the meeting at the North Avenue Auditorium?
A. Yes, sir.
Q. Just tell us in a general way what happened at that meeting.
2298 A. I went down to the North Avenue Auditorium, and the meeting really was a flop, there was no meeting. Some of the fellows asked for a lawyer, for an attorney's advice, and one of the men spoke up, he said, "Well, we can have a lawyer if you want."

So they called up Mr. Burke, and Mr. Burke came down
nd gave them legal advice on certain questions.
Q. What do you recall Mr. Burke saying?
A. He mentioned that you could join any organization,
e didn't say exactly which.
Q. Did he name them?
A. He named them, yes, sir.
Q. What did he name?
A. The C. I. O., A. F. of L., and any other.
Q. What, if anything, was done at that meeting, if you
now?
A. They really asked a few questions and Mr. Burke
nswered them for them, legal questions, what the boys
ouldn't answer.
Q. What were the questions about, do you remember?
A. No, I don't remember.
Q. Did they have reference to the Wagner law?
A. They did, yes.
Q. And the rights of the employees under it?
A. Mostly the Wagner law.
299 Q. You know Mr. Fred Wilson, do you?
A. Yes, sir.
Q. How long have you known him?
A. Over a year. I know him since I am working there,
it I didn't know him by name in the beginning.
Q. Did you see Mr. Wilson on April 19th, the Monday fol-
wing the meeting?
A. The 20th?
Q. The 19th, the day following the meeting at the Audi-
rium.
A. Yes.
Q. Where?
A. Down in the basement office.
Q. What did Mr. Wilson say to you at that time?
A. He asked me if I would go with him to a lawyer and
n certain papers, see a lawyer and sign certain papers.
Q. Did he tell you what he wanted you to sign?
A. After we got down by the lawyer, he explained it to

Q. What did you understand he wanted you to sign?
A. To try to organize a union.
Q. And did you understand the type of organization that
going to be?
A. Yes, sir.

Q. And what is the fact as to whether you went to a lawyer's office with Mr. Wilson?

2300 A. Well, Mr. Burke explained everything.

Q. No. What is the fact as to whether you went to a lawyer's office with Mr. Wilson?

Do you understand that question, Mr. Menz?

Q. (By Trial Examiner Batten) Did you go to the lawyer's office?

A. Yes, I did.

Q. (By Mr. Clark) Whose office did you go to?

A. Mr. Burke's.

Q. And who did you go with?

A. Mr. Wilson, and Joe.

Q. Trost?

A. Trost, and myself.

Q. When you got to Mr. Burke's office, who did you see?

A. I seen Mr. Burke and you.

Q. What did you do after you got there?

A. I signed the papers to organize the union.

Q. Were these papers read to you?

A. Yes, sir.

Q. Did you understand what was in them?

A. Yes, sir.

Q. What do you understand now those papers were?

A. To organize an independent union for Falk Employees.

Q. What is the fact as to whether you checked out when you went to Mr. Burke's office the next morning from your work?

2301 A. I checked out. I didn't get paid for the time I was down there.

Q. You have never been paid for it?

A. No, sir.

Q. Were you paid for that time at a later date?

A. No, sir.

Q. From the union?

A. Yes, I did.

Q. How much was it, do you know?

A. I don't know, I couldn't tell you exactly, four and a half, I guess; four; or four seventy-five, something like that.

Q. After signing these incorporation papers on Monday, when did you next go to Mr. Burke's office?

A. I am pretty sure it was on Wednesday.

Q. And what happened at that time, if you know?

A. Well, he told us that he had by-laws and certain books, and so on, you know what they need it for, for organization;

he was talking about legal seal, that he was going to get a seal for it, and certain other things.

Q. And did he also tell you that the articles had been filed with the Secretary of State's office?

A. Yes, sir.

Q. And also with the Registrar of Deeds' office here?

A. Yes, sir.

2302 Q. Were you at the meeting of April 24th, that following Sunday?

A. Yes, sir.

Q. Saturday, I mean.

A. Yes.

Q. You are not a director or officer of the Independent Union, are you, Mr. Menz?

A. No, sir.

Q. When did you sign an application to become a member of the Independent Union, if you know?

A. I guess it was on the 21st or 22nd.

Q. Of April?

A. Of April.

Q. Have you been at the monthly meetings of this association since?

A. I have been, yes. The last two meetings I didn't, though, I was very busy at home.

Mr. Clark: That's all.

Mr. Rissman: No questions.

Mr. Clark: That's all.

Trial Examiner Batten: That's all, Mr. Menz.

(Witness excused.)

Trial Examiner Batten: I believe before starting with Mr. Wilson, we will take just a few minutes recess, about five minutes.

2303 (A short recess was thereupon taken.)

Mr. Clark: Mr. Fred Wilson.

FRED WILSON, a witness called for and on behalf of the Independent Union of Falk Employees, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Clark) Your name is Fred Wilson?

A. Yes, sir.

Q. How old a man are you?

A. Forty-seven.

Q. Married?
A. Yes, sir.
Q. Have a family?
A. Yes, sir.
Q. You live in Milwaukee, do you?
A. Yes, sir.
Q. You are employed at The Falk plant?
A. Yes, sir.
Q. How long have you been employed at the Falk plant?
A. Nineteen years, with the exception of about two and a half years I had for leave of absence.
Q. When was that?
A. It was during the depression of 1932 or '33, and about seven or eight months in 1934 I think, or '31, '32 and '33,
2304 I am not sure.
Q. During the time that you were away from the Falk plant, what did you do?
A. I worked for the Standard Oil Company.
Q. In what capacity?
A. I managed a service station for them at Thirty-Eighth and Wisconsin.
Q. What is the fact as to whether you have ever been a member of any labor organization, other than the Independent Union of Falk Employees?
A. When I worked for the Standard Oil Company, a fellow by the name of Jack Bronson—John, we always called him Jack—Bronson, he got the idea that the fellows in the service stations were not getting enough money.
Of course, we knew that, we had taken it up with the company a number of times, and we couldn't do anything with them.
Q. Please, Mr. Wilson, before we get into your examination, when I ask you a question, if you can answer it "yes" or "no", will you please do so? I will repeat the question:
Q. What is the fact as to whether you have ever been a member of any labor organization besides the Independent Union of Falk Employees?
A. I have.
Q. What organization was that?
2305 A. Filling Station Operators' Union, I forget the number, affiliated with the American Federation of Labor.
Q. What, if anything, did you have to do with the formation of that union?
A. I was very active in the organizing of it.

Q. When was that?

A. That was in either—I wouldn't swear whether it was in '31 or '32.

Q. And it was while you were working for the Standard Oil?

A. Yes, sir.

Q. Did you have any office in that union?

A. No, sir, I did not.

Q. Are you still a member?

A. No, I don't think I am.

Q. How long were you a member?

A. Until I left the employ of the Standard Oil Company.

Q. With reference to this Independent Union of Falk Employees, what if any office do you hold in that?

A. I am one of the directors, and president of it.

Q. And what is your position at the Falk plant?

A. I am an electrician, in the Electrical Department.

Q. And how long have you been in the Electrical Department of the Falk Company?

A. Ever since I went down there.

Q. What are your duties, generally?

2306 A. Well, new construction and maintenance, more new construction than maintenance.

Q. What is the fact as to whether you were ever a member of the Works Council?

A. No, sir, I never was on the Works Council.

Q. Do you remember the meeting of Falk employees called for the North Avenue Auditorium on April 18th?

A. Yes, sir, I do.

Q. Were you at it?

A. I was.

Q. What if anything did you do at that meeting?

A. Well, I was just a good listener until I thought it was becoming a flop, and of course, I was kind of interested in it, and I wanted—I really in my heart wanted to see some organization whereby the employees could bargain for themselves, and I made a motion that they set the amount of dues, and collect it there.

Of course, I don't know whether anybody heard me or not, there was so much heckling going on over there you couldn't hear anything.

Q. You remember Mr. Burke being there, do you?

A. I do.

Q. You tell us, as well as you can, what you remember him saying.

A. Mr. Burke was sent for, and when he came he was
2307 introduced to everyone, and he said he came to answer every question that anyone can ask him, and he said, "I object to that. I will answer any question if I am able to do so." He said, "Before I begin, I understand that this meeting is called for the organization of an independent union," and he says, "I want everyone here to understand that it is their right to join either the C. I. O., the American Federation of Labor, or to organize one, it is all up to them," and he said, "Whatever you join, God bless you." That's all he said. That was his opening remarks.

Q. He answered some questions concerning the Wagner law, did he?

A. He did.

Q. What if anything happened at that meeting by way of a motion or resolution?

A. There was never a motion or resolution made.

Q. And is it your understanding that that meeting adjourned without having accomplished anything specially?

A. Yes, it is.

Q. Had you known Mr. Burke prior to that time?

A. I had never seen the man before.

Q. When did you first meet him?

A. After the meeting, in the tavern, down below.

Q. Just tell us about that meeting.

A. I went down after the meeting, and I got over in
2308 a corner with a few fellows, and we had a couple of beers, and we got to talking about the possibility or the probability of forming an independent union, and there were some of them that were very anxious, the same as I was, to have an organization of that kind, and I made up my mind then that I was going to introduce myself to Mr. Burke, which I did.

Q. You say you were anxious to have an independent organization. What were the reasons that you had in mind for wanting an independent organization?

A. Well, the one outstanding thing in my mind was the experience I had when I belonged to the Filling Station Operators' Union, when I worked for the Standard Oil Company.

Q. What was that experience?

A. We had drawn up a contract, and we intended to hand it over to the different oil companies. We called in a couple of fellows from the Federated Trades Council to look it over with us, and help us frame the contract. Of course, they vol-

teered their services, and we drew up a contract, and the mmittee we had, our business agent, took it to the Standard l Company,—or the different oil companies in town, but, ten they signed it, and he brought it back, it was an entirely fferent contract than what we had originally drawn up.

Q. What is the fact as to whether it was as favorable as the first one that was drawn up?

09 A. I should say it wasn't.

Q. (By Trial Examiner Batten) You mean that is ur opinion, that it wasn't?

A. I know it wasn't, because I read both of them.

Q. I say, that is your opinion?

A. Yes, sir.

Q. You feel that it wasn't?

A. Yes, sir.

Q. (By Mr. Clark) What other reason did you have, if y, at this time, for favoring an independent union?

A. I figured this way, that I had spent a lot of time with at union, in helping frame this contract, and after I had ent all that time, I figured to myself, "Well, you can't do ything here, it is a cinch nobody else can do it for you, less you do it yourself." And the main reason, I was so terested and anxious to get an independent union started. hereby I would have some voice in it.

Q. What happened after you introduced yourself to Mr. rke?

A. I introduced myself to Mr. Burke, I said, "Mr. Burke, m very much interested in the formation of an independent ion, and it is my honest belief that it is a complete flop ght now that this is the end of it."

I said, "If I was to get two"—no. I asked him how many it would take to form a corporation. He said, "It will 10 take three signers."

I said, "Will you be"—

Q. Just a minute, Mr. Wilson. With reference to the cor- ration, did you suggest the possibility of a corporation?

A. Yes, I did.

Q. What did you have in mind with reference to that situ- ion?

A. Well, there had been so much talk around, not only in e shop, but everywhere you went, about the very loose way which the C. I. O. handled their dues, that there is no one er gives an accounting of it, where the money goes, or what ey do with it. That is my understanding from the talk that s been going around.

Q. What influence did that have on your suggestion for a corporation?

A. I figured that the corporation's books at any time are open for inspection of any member of a corporation, not only the officers or directors, but any member at any time can come and examine the books, and they can find out what is being done with their money.

Q. Now, Mr. Wilson, what did Mr. Burke say in answer to your question about how many men it would take to incorporate?

A. He told me it would take three.

Q. Just tell us what was done by you there.

2311 A. I asked Mr. Burke if he would be in his office the next morning. He said yes. I said, "What time?" He said, "Any time after a reasonable hour." He didn't tell me what time he would be there. I said, "Will you be there at 10:00 o'clock?" He said, "Yes".

I said, "Providing I can find two men in the plant that are willing to come with me and sign those articles of incorporation, I will be there with these two men at 10:00 o'clock in the morning, and we will sign them, and we will get this thing rolling, get it started."

Q. Was that in substance all that was said at that time?

A. Yes. He just agreed to be there.

Q. You did go to Mr. Burke's office the next morning?

A. I did, yes, sir.

Q. With whom?

A. Joe Trost and Carl Menz.

Q. Was Mr. Trost present at this conversation between you and Mr. Burke?

A. I believe he was, I wouldn't swear it. There were two fellows there.

Q. Do you remember his volunteering, and saying he would sign it if you would?

A. No, I don't.

Q. You saw Mr. Menz then the next morning?

A. Yes, sir, I did.

2312 Q. And after going to Mr. Burke's office, what happened?

A. Of course, Mr. Burke knew what we were there for, and I introduced Mr. Trost, whom he already knew, and Mr. Menz, and told him that we had come down to sign the articles of incorporation, and I asked him if he had a copy of them, and he said, "Yes, I have four copies," and he handed

each one of us a copy, and told us to read it with him, and he read it over, and he wanted to know if we understand it.

I said, "Well, there are some things in there that I don't understand," and he explained them to us; what they were, it has been so long ago I just can't remember, but he explained them to us, and we signed them.

Q. Was it your understanding that they were to be filed that day at Madison?

A. Yes, sir. He said he would send them over by special messenger.

Q. When did you next see Mr. Burke?

A. The following morning.

Q. And what if anything was said there?

A. We went in. He said, "Well, the articles have been filed with the Secretary of State." He said, "They are now at the Registrar of Deeds' Office being registered in Milwaukee."

Q. What if anything was done about arranging for a meeting?

A. We talked it over with Mr. Burke, and we de-
2313 cided to have a meeting the following Saturday, which was the 24th.

Q. Was there anything done concerning the form of notice which was to be issued concerning that meeting?

A. Yes, there was. I believe Mr. Burke drew that up for us.

Q. Do you know whether such notice was finally printed and distributed?

A. I do.

Q. I show you what has been marked Independent Union Exhibit No. 1, and ask you if that is the form of the notice that you have reference to?

A. Yes, sir, it is.

Q. And who, if you know, had this notice printed?

A. Mr. Menz.

Q. What was done about where it should be printed?

A. I asked Mr. Menz if he would have a little time to get some printed, and I told him, I say, "When you get them printed, be damn sure there is a union label on them."

Q. And were they printed by a union shop, if you know?

A. Yes, they were.

Mr. Clark: I will offer that at this time, if the Examiner please.

Trial Examiner Batten: It will be received.

(Thereupon, the document above referred to, marked INDEPENDENT UNION OF FALK EMPLOYEES' EXHIBIT NO. 1, was received in evidence.)

2314 Q. (By Mr. Clark) Mr. Wilson, what is the fact as to whether you were at Mr. Burke's office again that week?

A. Yes, I was there twice more that week. I think the next time I was there was on a Thursday, Thursday afternoon I think it was.

Q. When I refer to Mr. Burke's office, you have in mind the office of Alexander, Burke & Clark, do you?

A. Yes, sir.

Q. 110 East Wisconsin Street?

A. Yes, sir.

Q. What, if anything, happened on that occasion?

A. We were called there by Mr. Burke, and he mentioned a few things that we would have to have in the line of books, and everything, and the corporate seal, and we told him to go ahead and get the books and have the seal made, which he volunteered to do.

Q. (By Trial Examiner Batten) You don't mean he was going to get it for you for nothing?

A. Oh, no, no. We were broke at that time.

Q. You said, "volunteered".

A. He just volunteered his services to do that.

Q. (By Mr. Clark) What, if anything, was said by Mr. Burke pertaining to fees for his work done in this registration?

A. He said, as far as his fees were concerned, that
2315 if this Independent Union kept agoing, he would send his fee, to the Independent Union, and the Board of Directors could take it, and, if we thought it was too high, we could come down and talk it over with him.

Q. What is the fact as to whether the office of Alexander, Burke & Clark has rendered a bill to your organization for services?

A. They have.

Q. And what is the fact as to whether payments have been made on that bill?

A. They have been made.

Q. How much, if you know, has been paid to the firm of Alexander, Burke & Clark prior to the commencement of this proceeding?

A. $200.00.

Q. And how much has been paid since this proceeding has started?

A. Another $200.00.

Q. Now, you are familiar with the books of the Independent organization?

A. Yes.

Q. On what is that familiarity based?

A. Well, being the president and one of the directors, those books have been audited, and I have been on the auditing committee with the exception of once, and that
2316 is the last time.

Q. How often are they audited?

A. Once a month.

Q. By whom?

A. By the directors.

Q. And who appoints the auditing committee?

A. I do.

Q. What is the fact as to whether, if you know, this organization has paid any money to Mr. Greget for notices that were printed pertaining to the meeting of the 18th?

A. It never paid Mr. Greget for those notices.

Q. Do you know how he was paid for those notices?

A. Only what he told me.

Q. What did he tell you?

A. He told me he took the money out of the collection that was taken on the 18th of April at the North Avenue Auditorium.

Q. Now, Mr. Wilson, why do you feel that the Independent Union of Falk Employees is a competent agency to represent all of the employees eligible for membership, for the purpose of collective bargaining?

A. We have, throughout the shop, elected thirteen directors, and that was our aim, to have a director to represent each and every department, and we have so divided the plant as to be a very workable system, that is the way we fig-
2317 ured it out, and I think today it is working just the way we thought it would.

Q. How often has your membership met, if you know?

A. We have had five meetings.

Q. Since April?

A. Well, I am counting the 24th of April as the first meeting.

Q. And how often does your Board of Directors meet?

A. They meet immediately after the close of the regular

meeting for the members, and then they meet at special meetings called by me or by some of the directors, and I would say that we have on the average one a month.

Q. Are minutes kept of the meetings of the membership?

A. Yes.

Q. And are minutes kept of the meetings of the Board of Directors?

A. Of those meetings we have immediately after the regular meeting, yes.

Q. Meetings of the Board of Directors?

A. Yes.

Q. You have minutes of those meetings, do you?

A. Oh, yes.

Mr. Clark: Will you mark this, please?

Trial Examiner Batten: I was just wondering, you want to introduce this for the purpose of showing you do
2318 keep regular records, or whatever you want to call them, for the purpose of showing some particular thing in the minutes. My only thought was, you suggested substituting copies.

I was thinking it may hold up the proceedings. I mean, how would we get them to the reporter? If it is your purpose to show there were minutes, and so forth, you and Mr. Rissman may stipulate, or, if there is some particular thing in some meeting you want to show, have the witness testify from the minutes.

Mr. Clark: I think it is for both purposes. My purpose is to have the Examiner have at his disposal all of the minutes of all of the directors and the members.

Trial Examiner Batten: I will be glad to have them.

Have you a copy?

Mr. Clark: I haven't a copy, but I will have.

Trial Examiner Batten: When will you have a copy to substitute?

Mr. Clark: As long as it will take to get them written, probably a day or so.

Trial Examiner Batten: The reason I am asking you is, that under those conditions, you may introduce those. This reporter will be back in Chicago, I presume, when this case finishes, and he is supposed to retain the custody of the records, and I am wondering how we will get the copies.

Off the record.

2319 (Discussion outside the record.)

Trial Examiner Batten: The reporter tells me he

will be here tomorrow, Mr. Clark, so, if you want to go ahead and introduce them, you may do so, and have them to the reporter by tomorrow. That will be Independent Union Exhibit No. 2, will it not?

Mr. Clark: Yes.

Trial Examiner Batten: Consisting of how many pages? Or do you want to show that?

Mr. Clark: A black covered book, styled "Record of Proceedings, Minute Book of Independent Union of Falk Employees," marked Independent Union's Exhibit No. 2.

Q. (By Mr. Clark) I will ask you, Mr. Wilson, if this Exhibit No. 2, which purports to be the minute book of the Independent Union of Falk Employees, contains the minutes of the meetings of the members and the directors that you have referred to?

A. With the exception of the last meeting.

Trial Examiner Batten: As I understand it, Mr. Clark, you want to withdraw the original and substitute a copy?

Mr. Clark: Yes. I will withdraw it at this time, and make that request.

Trial Examiner Batten: It may be received.

Mr. Rissman: No objection.

Trial Examiner Batten: Independent Union of Falk
2320 Employees' Exhibit No. 2.

(Thereupon the document above referred to, marked INDEPENDENT UNION OF FALK EMPLOYEES' EXHIBIT NO 2, was received in evidence.)

Mr. Clark: This proceeding, as for instance the charter, which I presume is not essential for this purpose, and the by-laws, are copied in here as part of the minutes of the meeting, and that is already in evidence.

Mr. Rissman: You are offering only the minutes?

Mr. Clark: Yes.

Trial Examiner Batten: It will be understood, then, that the articles and by-laws which are part of the minute book, it will not be necessary to substitute copies of those, because they are already exhibits in this proceeding.

Q. (By Mr. Clark) Mr. Wilson, are you familiar with the number of applications that have been signed for membership in the Independent Union of Falk Employees?

A. I am.

Q. Tell us the number, please.

A. 809, as of July, I think it was the 26th.

Q. With reference to members who have paid dues, how

many members have paid dues to this organization, that you know of?

A. 819.

Q. As I understand it, then, there are fifty other 2321 applications signed, but who have not paid dues?

A. Yes, sir.

Mr. Clark: I don't know how to exactly handle this. There are 818 of these applications.

Mr. Rissman: Beg pardon?

Mr. Clark: These are the applications. I would like to make them part of the record, but I don't know whether we should let them get away.

Trial Examiner Batten: Do you want to substitute copies for all of them?

Mr. Clark: We could, if we had time.

Mr. Rissman: Couldn't we do this? Off the record.

Trial Examiner Batten: Very well. Off the record.

(Discussion outside the record.)

Mr. Rissman: Has Mr. Wilson counted them?

Mr. Clark: I don't know whether he has or not.

The Witness: Yes, I have counted them.

Mr. Rissman: Why don't you introduce the blank? You have testimony as to the number?

Trial Examiner Batten: This is off the record.

(Discussion outside the record.)

Mr. Clark: Mark this, please, Independent Union Exhibit 3.

Q. (By Mr. Clark) I show you what has been marked Independent Union Exhibit 3, and ask you what it is, if 2322 you know.

A. That is an application for membership in the Independent Union of Falk Employees.

Q. And the applications that I have referred to as being in the bound book contain applications similar to this?

A. Yes.

Q. And there are some applications in that book which are similar to Board's Exhibit number— Change that part of the question. It is Local No. 311's Exhibit No. 2.

Trial Examiner Batten: Just a minute. Is that the application of yours?

Mr. Clark: Yes.

Trial Examiner Batten: Or is that the application of Local 311?

Mr. Clark: Of ours.

Trial Examiner Batten: They have introduced a copy of their application, so you want to be sure.

Mr. Rissman: Let's take a minute, and see.

Mr. Clark: Let's see Exhibit 32, please.

Trial Examiner Batten: 32 is the proper exhibit. Board's Exhibit 32?

Mr. Rissman: Yes, it is.

Mr. Clark: Strike that last question.

Q. (By Mr. Clark) Referring to Board's Exhibit No. 32, Mr. Wilson, what is the fact as to whether several of
2323 the signed applications in this bound book are on this form of application?

A. They are.

Q. Now, what is the fact as to whether the minutes of your directors will show negotiations had with your employer concerning grievances taken up with the employer?

A. They will show that.

Q. And what is the fact as to whether negotiations had between your organization and The Falk Corporation will be shown in the minutes?

A. You mean the ones we presented to the company?

Q. Yes.

A. They will be shown in the minutes.

Q. Now, as I understand it, your organization was negotiating with The Falk Corporation for the purpose of entering into a contract concerning hours of work and wages?

A. Yes, sir.

Q. When were those negotiations carrried on?

A. Where?

Q. When?

A. Along in May sometimes, May or June.

Q. Why were they discontinued, if you know?

A. They were discontinued on account of a letter written to The Falk Corporation by the National Labor Board, and signed by Mr. Clark.

2324 Q. You have reference to the letter signed by Mr. Clark as the Regional Director, in which he says that because of the fact that the Wisconsin Labor Board had turned down your application for listing, any negotiations carried on would be illegal?

Mr. Rissman: I object to the question. He might ask the witness if he refers to the letter that Mr. Lamfrom read into the record, and the letter will speak for itself.

The Witness: Yes.

Mr. Clark: All right.
The Witness: Yes.
Q. (By Mr. Clark) With reference to the letter Mr. Lamfrom read into the record?
A. Yes, that is the letter.
Q. What are the facts as to whether the Wisconsin Labor Relations Board have ever turned down your organization for listing?
A. They have never turned us down.
Q. (By Trial Examiner Batten) Did you ever apply for listing?
A. Yes.
Q. How long ago?
A. In April.
Q. Did you ever hear anything from them?
A. I did.
2325 Q. What did they say?
A. They said it was held up there, that's all, until we offered more evidence to prove it was an independent union, and not dominated by the corporation, The Falk Corporation.
Q. Have you submitted additional evidence?
A. I think Mr. Clark made a trip to Madison, and when he got there, the man at Madison was in a hurry, I think Mr. Clark said he was going to Janesville.
Q. So there has never been any decision on that, then?
A. No, there has never been any decision.
Q. (By Mr. Clark) As a matter of fact, you requested the Labor Board to withdraw your application?
A. Yes.
Q. After the charges were filed in this matter?
A. Yes, I did.
Q. Are you familiar with the matter taken up by your organization concerning the discharge of certain men?
A. Yes, sir, I am.
Q. Tell us about that.
A. We took the matter up with the management. Mr. Harold Falk was there, and I had a little note, a sort of a memorandum, of what we wanted to present to him, to make those requests. We demanded the immediate reinstatement of three men who had been discharged.
Q. Who were those three men?
2326 A. I don't know whether I can recall their names or not, but one welder, and two inspectors. I think the welder was Fred Douglas.

Q. Would their names appear in the minutes of their or-
nization?
A. Yes, they do.
Q. Were they members of your organization?
A. No, sir.
Q. Do you know whether they were members of the C. I.
?
A. They were all three members of the C. I. O.
Q. And what is the fact as to whether these men were re-
stated after you requested that they be reinstated?
A. Yes, they were.
Q. And who notified them of their reinstatement?
A. Our secretary, Mr. Moebus.
Q. (By Trial Examiner Batten) Were they appealing to
ur Board of Directors that they had been discriminated
ainst?
A. Yes, that was my opinion.
Q. In other words, you felt that because of their activities
the C. I. O., the company had discriminated against them
their discharge, and for that reason you asked that they
reinstated?
A. Yes, that was my opinion, and I so expressed it to the
oard of Directors. Of course, I never did find out why they
were discharged.
27 Q. But that is the reason you took up the case?
A. That is the reason I took it up, sure.
Q. (By Mr. Clark) You felt that being a bargaining agent
r all of the employees, that you should represent them, as
ell as your own members?
A. Absolutely.
Q. What is the fact, Mr. Wilson, as to whether your or-
nization has anything to do with the operation of the can-
en?
A. No, we have not.
Q. (By Trial Examiner Batten) Are they still running
?
A. Yes.
Mr. Clark: I would like to offer, in connection with Mr.
ilson's testimony, the last exhibits.
Trial Examiner Batten: They may be received.
(Thereupon, the documents above referred to, marked IN-
EPENDENT UNION OF FALK EMPLOYEES' EX-
IBITS NOS. 2-A, 2-B and 3, were received in evidence.)
Q. (By Mr. Clark) Are you familiar with the depart-
nts represented by your Board of Directors?

A. Yes, I am.

Q. And do you know the number of representatives from each department?

A. I am pretty sure that I do.

Q. For the purpose of refreshing your recollection,
2328 I show you a memorandum which purports to describe the departments and the number of representatives. Is that correct?

A. No, that is not. In the foundry, we intended to give four, four directors. We had forgotten the Welding Department. We took one representative from the foundry, and gave him to the Welding Department, we made another department out of it.

Q. The Examiner has asked for a compilation of the departments and the representatives on your Board of Directors. You can have that prepared by morning, can you?

A. Oh, yes.

Trial Examiner Batten: It will be understood, Mr. Clark, when he presents that here in the morning—although it will be another case—that the reporter may receive it.

Mr. Clark: Yes.

Trial Examiner Batten: As a part of the records in this hearing.

Mr. Clark: Sure.

Trial Examiner Batten: And can it be understood that it will be marked Independent Union Exhibit No. 4, is that agreeable?

Mr. Lamfrom: It is agreeable to us.

Trial Examiner Batten: If there is no objection, it will be so received.

2329 Mr. Clark: I think that's all.

Cross-Examination.

Q. (By Mr. Rissman) Mr. Wilson, I hand you the bound book of application cards of the Independent Union—

Trial Examiner Batten: Apparently we are not going to finish right away, I think we will recess for about five minutes.

(A short recess was thereupon taken.)

(Witness withdrawn.)

JOSEPH CIBULKA, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed and testified further as follows:

Examination by the Chair.

Q. (By Trial Examiner Batten) You were on the stand yesterday, were you not?

A. Yes, sir, I was.

Mr. Engelhard: Did you want to ask him a question, Mr. Examiner?

Trial Examiner Batten: I think I do, just preliminary.

Q. (By Trial Examiner Batten) You testified yesterday regarding a certain memorandum?

A. Yes, sir.

Trial Examiner Batten: Off the record.

(Discussion outside the record.)

2330 Q. (By Trial Examiner Batten) That memorandum included deductions which were made covering what period of time?

A. April 12th, 13th, 14th and 15th.

Q. That did include, then, some deductions on the 15th?

A. Yes, sir.

Q. And who was deducted from the 15th?

A. I couldn't say. This list is a summary, covering all four days.

Trial Examiner Batten: I understood you to say yesterday it covered the 12th, 13th and 14th.

Mr. Engelhard: No, I think he testified he got it up to the 15th.

Mr. Lamfrom: He has it written down here on the memorandum.

Q. (By Trial Examiner Batten) Do you know who were deducted for the 15th?

A. I couldn't tell off of this list. This is a summary of the deductions for the four days.

Q. Do you have your papers there that you made the summary from?

A. I don't know whether I have them or not.

Mr. Rissman: Off the record, if the Examiner please. I think you might ask him if he has Mr. Prodoehl's name.

The Witness: I have not.

Q. (By Trial Examiner Batten) You haven't Mr.
2331 Prodoehl's name?

A. No, I know that.

Q. Now, have you the memorandum there from which you made this summary?

A. I have a memorandum there, but it does not give us any more detail than this one here.

Q. Well, as far as I am concerned, if it doesn't contain this man's name, Prodoehl, that's all I am concerned about.

A. Prodoehl is paid on the monthly salary basis, and we pay for any reasonable absence on a monthly salaried man.

Redirect Examination

Q. (By Mr. Lamfrom) That is, it is not the practice of The Falk Corporation to deduct from salaried men any of their remuneration, when these absences are for a reasonable time, or for a reasonable purpose?

A. That's right.

Q. And they do not use the time-card system?

A. They use it to a certain extent, although not in the same detail in which our shop or machine operators use them.

Q. Would the company officials have knowledge of the fact that a man like Mr. Prodoehl would absent himself from the department in which he worked, and go some other place for an hour or two, would that be brought to the attention of the company officials by anybody?

A. Not to the company officials, I don't believe a
2332 matter of that kind would be brought to the attention of the officials.

Q. To whose attention would it be brought?

A. It may be brought to the attention of the departmental supervisor.

Q. Have you any information as to whether or not this particular absence of Mr. Prodoehl—on April 15th, was it?

Mr. Engelhard: The 15th, I think that is what he testified to.

Q. (By Mr. Lamfrom) On April 15th, when he testified he attended a meeting, was it brought to the attention of the supervisor?

A. I have no knowledge whether that was done or not.

Q. Is it a matter of quite frequent occurrence that the monthly salaried employees do absent themselves for reasonable periods of time without any deduction?

A. Oh, yes, that is the regular occurrence—I wouldn't say regular, but I would say it is an occurrence which happens, I would say, every day.

Q. As regards some of the monthly salaried employees?

A. Yes, that's right.

Q. And how long has that been the practice or the custom of the company?

A. As long as I am connected with the payroll, which is about fourteen or fifteen years.

2333 Mr. Lamfrom: That's all.

Trial Examiner Batten: That's all.

Mr. Engelhard: I would like to ask just one question, or maybe more than one.

Q. (By Mr. Engelhard) Mr. Cibulka, I understand that in making out your payroll, the men had a yellow card for their regular working hours?

A. They had a—

Trial Examiner Batten: Are you talking now of the production men?

Mr. Engelhard: Yes. The production men had a yellow card.

Trial Examiner Batten: Mr. Engelhard, I am afraid I will have to hold you to the same thing I did someone else a few moments ago.

Mr. Engelhard: I merely want to indicate how the two cards are used.

Trial Examiner Batten: Well, it has already been testified to in the record, a yellow card and a blue card.

Mr. Engelhard: Not by this man, though.

Trial Examiner Batten: It is a matter of evidence here, I don't think there is any misunderstanding. There is a yellow card in the morning, when they come in. When they go out during the day, they put it in the time-clock and punch it on the blue card. When that comes into the office, the

2334 blue card is deducted from the amount of time on the yellow card, in some way they estimate the time spent; from the blue and the yellow cards.

Q. (By Mr. Engelhard) Is that correct, Mr. Cibulka?

A. The yellow card is the one which is kept in the man's rack or a pay period. It contains sufficient space for punching a half month's period. The blue card which was referred to —By the way, that should be a white card.

Q. (By Trial Examiner Batten) Some of them said here "blue".

A. Well, we have changed colors since that time.

Trial Examiner Batten: All right.

The Witness: Anyway, that is the daily cost card, which contains a distribution of the work which he did on that particular day. A man may work eight hours. That eight hours would register on the yellow card. To balance that eight hours, he would have, say, four or five white cards, which would be distributed to the various jobs on which he worked.

Q. (By Trial Examiner Batten) Who writes up at the head of the white card, so that you would know what the job was that he was on during that time?

A. That varies in departments. In some departments, the workman himself makes that note, and in others they have departmental timekeeper.

2335 Q. Then you have the cards, have you not, either the blue or the white cards, in your records, for all these deductions you made?

A. We did have them at that time.

Q. Where are they now?

A. Those cards are retained for a period of approximately two months, we summarize those cards at the end of the months for our ledger entries, and after we have summarized them, we have no further use for the time cards, and they are kept for a period of approximately two to three months.

Q. And then you destroy them?

A. Then we destroy them.

Q. When did you destroy the cards of these meetings that refer to the meetings of April 12th, 13th and 14th?

A. I don't know when they were destroyed.

Q. Then the information you have as to the deductions, from what record did you take that?

A. I took that from these white cards referred to in the testimony, these cost cards.

Q. That is what I am getting at. Do you still have those?

A. No.

Q. When you made this summary, which is now an exhibit, where did you get the number of hours that you deducted from each employee for the time spent in these meetings?

A. At that time, those daily cost cards were still 2336 available. I made this out approximately May 1st, somewhere in there.

Q. When you deducted on the next payday?

A. That's right.
Q. So you at that time had those cards?
A. We had them at that time, yes, that was the basis of our estimation.
Q. (By Mr. Engelhard) Do I understand that this summary was made from your ledger?
A. No, no.
Trial Examiner Batten: He made it away back at the time he actually made the deduction.
Q. (By Mr. Engelhard) I mean this particular memorandum that we had yesterday, from which you testified, when did you make that memorandum?
A. This was made at the time the deductions were made.
Q. This memorandum on there?
A. This one here. That is a copy of this here (indicating). I don't know if it was this particular sheet of paper, but for the evidence, I copied it off of the original notice of deduction.
Q. That is for the purpose of deducting from the pay checks?
A. That's right.
Q. (By Trial Examiner Batten) Do you recall what any of these white cards said at the top? What did it say?
2337 A. "Attendance at meetings."
Q. "At meetings"?
A. That's right.
Q. It did not designate any meetings?
A. Some of them may have, I don't know. They usually merely write down "meeting".
Q. Have you any recollection now that any of them stated what meeting, or where, or anything?
A. I don't know. They may have stated "Works Council Meeting", but I am not sure of that. They are usually very brief about that. In many cases, they merely write down "meeting".
Q. Of course, I presume the reason they went through your department was that whoever handled the cards assumed that is the kind of meeting it was, they assumed it was a Works Council meeting?
A. Well, our clerical force has no knowledge of the different meetings.
Q. It wasn't called to your attention?
A. No, not specifically. That was handled as a matter of routine.

Trial Examiner Batten: That's all as far as I am co
cerned.

Mr. Rissman: No questions.

Mr. Lamfrom: That's all.

2338 Trial Examiner Batten: That's all.

(Witness excused.)

Mr. Clark: Before the cross-examination commences, would like to ask a few questions in explanation of some tes mony of Mr. Wilson.

Trial Examiner Batten: You would what?

Mr. Clark: In explanation of some testimony given Mr. Wilson, I would like to straighten out some matters.

Mr. Rissman: He just wants to continue his direct e amination.

Trial Examiner Batten: Oh, yes. Go ahead.

FRED WILSON, a witness called by and on behalf of t Independent Union of Falk Employees, having been pr viously duly sworn, resumed and testified further as fo lows:

Direct Examination (Continued).

Q. (By Mr. Clark) Mr. Wilson, you were asked a que tion by the Examiner, as to whether you thought these thr men who had been discharged had been discriminated agains and as I understand it, you answered "yes".

Have you any explanation to make as to that answer this time, what is your understanding?

A. Well, I didn't really mean they were discriminat against. What I meant to say was that that Saturday th were fired, there was an awful uproar in the plant.

2339 They intended to work all day, and all of a sudd the order came out to close at noon. This was about fi minutes to 12:00. Of course, I went around and asked so of the fellows why the order came out. They said there h been a fight up in the end of No. 2 Shop, that they h threatened a couple of fellows; in fact, that one fellow h hit another one.

Q. Is it your understanding that these men who had be discharged were in this fight?

A. Well, that was my understanding, that they had be in that fight.

Q. Was it your understanding that is why they had been discharged?

A. Yes, that is the understanding I had, that that is why they had been discharged.

Q. And you asked that they be reinstated for what reason? What reason did you give for asking they be reinstated?

A. I told Mr. Falk that I thought that under the circumstances that existed that morning at the plant, I thought, or we thought, that the management had acted kind of hastily. Everybody was in an uproar around there. I didn't—Well, I just wanted them back, because I thought they had acted kind of hastily, even though there was a fight, according to what I heard.

Q. You didn't think they were discriminated against
2340 because of their activity in the C. I. O.?

A. Oh, no, no, no, I should say not. I didn't mean that, not for a minute.

Q. (By Trial Examiner Batten) At least you felt that they were unjustly discharged? Otherwise, you wouldn't have taken it up.

A. Well, to a certain extent.

Q. That is what I mean. It is not a matter of degree with me. If you felt that the company had properly and justly discharged the men, you would not have interceded for them, would you?

A. Oh, yes.

Q. You would try to get them back, even though you thought they ought to be fired?

A. Sure, I would, if I didn't know the exact reason why they were fired, certainly. I figure that is one of my duties as a representative of the men working in the plant.

Q. You mean, any man that is discharged, you feel it is your duty to try to have him taken back?

A. Sure.

Q. No matter what the reason is?

A. I don't care what the reason. I will go over and fight for it.

Mr. Clark: That's all.

2341 *Cross-Examination.*

Q. (By Mr. Rissman) Who asked you to take up the cases of these men, Mr. Wilson?

A. No one. I took it up before the Board of Directors, I

called the directors together one night, and told them that these fellows were discharged, and asked them if it would be all right if we would take it up with the management.

Q. Did you know at the time you took it up with your Board of Directors the reason for the discharges?

A. Only from hearsay. I knew there was a lot of trouble there in the shop.

Q. Do you recall the names of the three men?

A. The welder's name was Fred Douglas.

Q. Let me refresh your recollection. Was the other one Hugo Hahn?

A. Yes.

Q. And Jim Jacobus?

A. Yes, those are the names.

(Here follow proceedings later expunged from the record, by direction of the Trial Examiner.)

Trial examiner Batten: I think we will recess a few minutes, and see if we can have this night session.

(A short recess was thereupon taken.)

Trial Examiner Batten: I think we are ready to proceed.

2342 After a conference, the Examiner has decided it will not be necessary to hold any evening session. We will finish now, and the Examiner is instructing the reporter to withdraw the last exhibit numbered 38, and all questions and answers and discussion relating thereto, from that point on, and it will be expunged from the record, physically stricken and not put in the record.

Mr. Lamfrom: As I understand it, from the first question Mr. Rissman asked this witness with reference to this exhibit?

Trial Examiner Batten: Yes, from the time the exhibit was marked down to the time that I started to make this statement, it will be expunged from the record.

Mr. Rissman: Mark this Board's Exhibit 38. This is another exhibit, if the Examiner please.

Q. (By Mr. Rissman) Mr. Wilson, I hand you Board's Exhibit No. 38, and ask you if that is one of the letters sent by the secretary of the Independent Union of Falk Employees to one of the discharged men?

A. I have never seen it before.

Q. Oh, I see.

A. He sent these under my instructions. I told him to get in touch with him. I never saw it.

Q. You never saw the letter?

A. No.

2343 Q. You don't know what that letter said, or what information it contained?

A. I instructed him to get in touch with all three of them, and he said he got in touch with two of them by 'phone, but he would get in touch with the third one by letter.

Q. But you do know that none of these three employees ever asked you, or your union, to intercede for them?

A. No, they never.

Q. What was the conversation you had with Mr. Falk about these three men, do you recall?

A. Well, I don't recall it all. I know that he objected very strenuously at the start to rehiring any of them. He said he thought, in his own mind, that he was really justified in discharging them, and after a lot of discussion and arguing, he finally said he would take them back, but he would talk with them before they were rehired.

Q. You have testified that Joe Trost, Carl Menz and yourself went to Mr. Burke's office following the meeting of Sunday, April 18th. Do you recall that testimony?

A. I said we went there the next morning, Monday, Monday morning we went there.

Q. That would be Monday the 19th?

A. The 19th, yes, sir.

Q. And what time was your appointment at the office?

A. At 10:00 o'clock.

2344 Q. In the morning?

A. Yes, sir.

Q. Did you obtain permission from anybody to leave your work?

A. I asked Mr. Mitchell if I could go downtown for a couple of hours, and he said yes.

Q. Who is Mr. Mitchell?

A. He is the chief electrician.

Q. Are you paid by the month, or by the hour?

A. By the hour.

Q. Were you docked for the time you were away from the plant?

A. Yes, I punched my attendance card out when I left, and punched it back in when I came back.

Q. When you came to Mr. Burke's office, he had the incorporation papers all ready for you to sign?

A. Yes, he did.

Q. And the first time you spoke to him about incorporation papers was Sunday afternoon, the day before?

A. Yes.

Q. How many people were at the meeting of April 24th, Mr. Wilson?

A. I didn't count them, but Mr. Moebus said he counted them, and as I recollect, I wouldn't be sure of the number, but I am pretty sure he said 489.

2345 Q. You stated that Mr. Greget paid for the notices and applications he testified about out of the money that was collected that first day?

A. That is what he told me.

Q. Do you know how much he paid?

A. No, I don't.

Q. Did you hear him testify here how much he collected?

A. Not that I recall.

Q. You have been here through the entre hearing, haven't you?

A. Yes.

Q. Didn't you hear him testify that he collected something like seventeen or eighteen dollars?

A. Not at the meeting of the 18th. He collected that at a meeting that was held under the hospital, as I recollect his testimony.

Q. Out of which collection did he pay for the printing?

A. He told me he paid it out of the collection that was taken up at the North Avenue Auditorium.

Q. You don't know how much he collected at that time?

A. No, I don't.

Q. You don't know if he collected more or less than the amount of the printing?

A. No, I wouldn't swear to it.

Q. You have before you now, Mr. Wilson, the bound 2346 book exhibit, of the union application cards?

A. Yes.

Q. Some of the applications are written on forms similar to Board's Exhibit No. 32?

A. Yes, sir.

Q. And some are written on applications similar to Independent Union Exhibit No. 3?

A. Yes, sir.

Q. When did the union stop using Board's Exhibit No. 32 as the form of application?

A. I don't just recall how long ago it was, but we ran out of those applications.

Q. You ran out of which kind? Board's Exhibit No. 32?
A. Yes.
Q. And then you started to use Independent Union—
A. Then we had these printed.
Q. (Continuing)—Independent Union Exhibit No. 3?
A. Yes.
Q. Will you thumb through the book, Mr. Wilson, and tell us approximately what percentage of the applications you see there are on the form similar to Board's Exhibit No. 32, this one?
A. The percentage?
Q. About how many. Just thumb right through them.
A. My best guess would be about 95 per cent of them.
2347 Q. And the remainder would be on the form indicated as Independent Union Exhibit No. 3?
A. Yes. If you wish me to, I can give you the exact date we got those up, from a canceled check stub.
Q. That isn't necessary.
A. This is so long ago it is hard to remember right offhand.
Q. The forms on which you say about 95 percent of the applications are written are the ones that were paid for by Mr. Greget?
A. Yes, sir.
Q. Mr. Wilson, who are members, or what employees of The Falk Corporation are members of the Independent Union?
A. Any employee of The Falk Corporation, with the exception of the management, superintendents, assistant-superintendents, foremen and assistant-foremen.
Q. The membership of that organization is limited only to people employed by Falk?
A. Yes, sir.
Q. And if an employee resigns or quits his employment with the company, does his membership automatically cease?
A. Yes, sir.
Q. And if an employee is discharged for cause by the company, does his membership in your union automatically cease?
A. Unless he is reinstated.
2348 Q. If he is not reinstated, his membership ceases to exist?
A. Yes, sir.
Q. And for how long a period after he is discharged, do you carry him on your books as a member?

A. Well, as soon as we find out he is discharged, we immediately try to find out why, and if there is good reasons, it is taken up by the Board of Directors, and talked over, as to the advisability of asking the management to reinstate him, and then—well, we haven't had any cases exactly like that, but then it would be my purpose and aim to go back to the management and see if we couldn't have him reinstated.

If he refused on good grounds, that is, if he had good grounds for discharge, and if he refused to reinstate him, his membership in the union would immediately cease.

Q. Mr. Wilson, you have testified that on April 18, 1937, either at the meeting or in the tavern after the meeting you spoke to Mr. Burke, the attorney, about a corporation?

A. Yes, sir.

Q. Where did you learn, or how did you know that it was necessary or advisable to incorporate an organization of the employees?

A. Well, I figured that by forming a corporation, it would be a more sound institution than if we didn't incorporate.

Q. Where did you get the idea or the thought that a
2349 corporation would be a more sound institution than an unincorporated organization?

A. Well, I know that in a corporation, the books of the corporation are open for inspection, of any of the stockholders or members of such corporation.

Q. Had you ever had any experience with corporations?

A. Not in forming them, no.

Q. Or as a member of one?

A. No.

Q. Then, how did you know that books of corporations were open for inspection?

A. Well, I have read quite a bit. I imagine I picked it up in some book I read.

Mr. Rissman: Mr. Clark, attorney for the Independent Union, has stipulated that the signature appearing on Board's Exhibit 38, for identification, is the signature of Bernard Moebus, the secretary of the Independent Union of Falk Employees.

I now offer BOARD'S EXHIBIT NO. 38 in evidence.

Mr. Lamfrom: What is that?

Mr. Rissman: That is that letter.

Trial Examiner Batten: It will be received.

(Thereupon, the document above referred to, marked

BOARD'S EXHIBIT NO. 38, was received in evidence.)

2350 Trial Examiner Batten: This doesn't need to be in the record.

(Discussion outside the record.)

Mr. Rissman: That's all.

Mr. Lamfrom: I haven't anything.

Examination by the Chair.

Q. (By Trial Examiner Batten.) Mr. Wilson, just one question:—

Trial Examiner Batten: What was the meeting, Mr. Clark, at which they organized? I have forgotten just the date.

Mr. Clark: The 24th of April.

Q. (By Trial Examiner Batten.) Where was that meeting held?

A. At the North Avenue Auditorium.

Q. How long did the meeting last?

A. The meeting of the members lasted, I would judge, approximately three hours.

Trial Examiner Batten: That's all the questions I have.

Mr. Lamfrom: Do you close your case?

Mr. Rissman: Yes.

Mr. Lamfrom: Case closed all around.

Trial Examiner Batten: Is that all, Mr. Clark?

Mr. Clark: Yes.

Trial Examiner Batten: Well, the record is closed,

2351 now.

Mr. Lamfrom: With reference to motions?

Trial Examiner Batten: I mean, as far as evidence, and so forth.

(Witness excused.)

Trial Examiner Batten: I presume, before Mr. Lamfrom makes some motions, I should pass upon some which have been previously made. I think, at the close of the Board's case, I reserved my opinion on, I think, six motions, five with respect to the separate allegations of the charges in the complaint, and one as to the so-called Omnibus Section.

Is that right, Mr. Lamfrom?

Mr. Lamfrom: That's right.

Trial Examiner Batten: Each of those motions is denied at this time.

You may proceed, Mr. Lamfrom.

Mr. Lamfrom: For the Respondent, now, I move, upon all of the evidence which has been submitted, for the dismissal of the petition and the complaint, on the same grounds as alleged in the motions made at the time of the close of the Board's case. That is, I need not repeat the reasons here. The reasons are based now upon all of the evidence.

Trial Examiner Batten: That is, you are making the two general motions, and also the six separate motions?

2352 Mr. Lamfrom: That's right.

Trial Examiner Batten: The Examiner will deny both the general motions and the six specific motions.

Mr. Lamfrom: It will be understood that these motions are now made, all of them, on the evidence as it now is in, in the entire proceeding.

Trial Examiner Batten: In other words, the motions are being renewed on the basis of all of the evidence?

Mr. Lamfrom: That's right.

Trial Examiner Batten: At the hearing?

Mr. Lamfrom: That's right.

Trial Examiner Batten: Are there any further motions?

Mr. Clark: I should like to make a motion on behalf of the intervener, the Independent Union of Falk Employees, to dismiss, on all of the testimony had in the record, that portion of the complaint having to do with the Independent Union of Falk Employees being in violation of the Wagner law, I can't find it at the moment. I think it is Paragraph 10 of the complaint.

Trial Examiner Batten: I presume you refer, Mr. Clark, to that section of the complaint which charges the Independent Union with having been fostered, dominated, and so forth, by the respondent?

Mr. Clark: Yes.

Trial Examiner Batten: If I remember it correctly, 2353 it is about 5 and 6.

Mr. Lippman: 9.

Mr. Clark: Paragraph 9?

Trial Examiner Batten: The motion is denied.

Mr. Lamfrom: The Respondent now moves, upon all of the evidence, that the intervening amended petition, or the amended petition on intervention of the International Union of Operating Engineers, Local 311, affiliated with the Wisconsin State Federation of Labor and the American Federation of Labor, be dismissed. There is no competent evidence before the Board to grant the petition.

Trial Examiner Batten: The motion is denied.

Mr. Rissman: I will now renew my motion, if the Examiner please, to amend the complaint of the National Labor Relations Board in such respects as that complaint is changed by all of the testimony introduced.

My previous motion was to amend the complaint, as far as at variance with the testimony.

Trial Examiner Batten: I do not understand the motion that you first made to be the same as the one that you made at the close of the Board's case. You just stated, I think, that you moved to—

Mr. Reporter, will you read the motion as it was made?

(Record read by the reporter.)

Mr. Rissman: I will restate it. I move now to amend
2354 the complaint of National Labor Relations Board to conform with the proof submitted in the entire matter.

Trial Examiner Batten: I assume, while you haven't stated so in your motion, I presume you are making that motion for the purpose of correcting only matters such as dates, or details of that sort, and with no thought in mind that you are amending the issues in the case?

Mr. Rissman: It is not my intention by this motion to add any new issue, or to omit any of the issues stated in the complaint.

Mr. Lamfrom: The Respondent will object to the granting of this motion, on the ground that it is not proper to have a complaint amended in any of its essential allegations to conform with proof, other than as such proof may be indicated by the essential allegations of the complaint, or that such proof is at variance, with the objections which have heretofore been made by the Respondent to the reception of evidence, and overruled by the Examiner.

Trial Examiner Batten: Just to understand your position clearly, Mr. Lamfrom, I understand that you are objecting to the motion also insofar as it goes only to correcting a date, or some detail in the complaint, where the proof discloses that it was other than stated?

Mr. Lamfrom: My objection to the motion goes to this
2355 point, and to this extent: That if the proof is at variance with any of the essential allegations in the complaint, other than that of incidents which are related and connected with the allegations of the complaint, such incidents being dates, places or other facts that go to make up the offense, which are not the material facts.

Trial Examiner Batten: Well, the motion will be granted, with the same limi ation as was specified in the first instance when it was made, that is, in line with your last statement, Mr. Lamfrom, that it applies only to such incidents as dates or matters of that kind, but not as to the material allegations in the complaint, or the proof presented in connection therewith.

Mr. Lamfrom: I have in mind in that respect something that Carlyle once said, that time and place are not necessary to events, but they are merely conditions under which events happen. That is about where I stand here.

Trial Examiner Batten: Are there any further motions?

(No response.)

Trial Examiner Batten: If not, the record is closed.

(Whereupon, at 6:20 o'clock p. m., Wednesday, August 25, 1937, the hearing in the above-entitled matter was closed.)

109 BOARD EXHIBIT NO. 17.

April 21, 1937.

To All Employees:

On May 25th, 1934, the President of the United States said,

"The Government makes clear that it favors no particular union or particular form of employe organization or representation. The Government's only duty is to secure absolute, and uninfluenced freedom of choice without coercion, restrain, or intimidation from any source."

The above is the policy of this company.

(1) This means all employes have a right To Join, or Not To Join, Any lawfully organized group of employes.

(2) Any statement made to you by anyone that you must pay dues to any organization to work here is Not True.

The Falk Corporation.

110 BOARD EXHIBIT NO. 18.

April 16, 1937.

To Our Employes in the Power House:

You have probably received a post-card from the organizer of the union stating that Mr. Kingsland had a satisfactory interview with me. The inference is that we are favorable inclined toward signing an agreement.

I wish to make our position perfectly clear to you—

(1) We are not in favor of a union.

(2) We will not agree to recognize Mr. Kingsland as bar-

aining agent for you unless you as a group signify your de-
re to have us do so.

(3) We are ready at all times to meet with you as a group
r individually to discuss your problems.

Yours very truly,
The Falk Corporation.

arold S. Falk
B

1 BOARD EXHIBIT NO. 19.

(Milwaukee)	(U. S. Postal Card)
(Apr 15)	(Cancelled)
(2 AM)	(1 One Cent 1)
(1937)	(Jefferson)
(Wis.)	

(This Side of Card Is for Address)
Mr. Mike Trebitosky
3809 W. Michigan Street
Milwaukee
Wisconsin

U. of O. E.
ocal No. 311 April 14, 1937
ear Sir:

Mr. Kingsland, our business representative, recently called
n Mr. Harold Falk, and the outcome of his visit was very
vorable. Only the hours that you men wish to work remains
be settled. Other minor conditions that you wish inserted
the contract will be discussed at a meeting to be held
unday morning, April 18, 10 o'clock at our office.

Fraternally yours,
P. A. Santner,
Organizer.

AS:CR

01 BOARD EXHIBIT NO. 21.

(Letterhead of The Falk Corporation, Milwaukee.)

o: April
essrs. Fred Wilson Twenty-third
Joseph Trost 1937
Carl Menz

After conferences with your Committee, and upon your
atement that your organization represents the majority of
ur employes and that you request that we enter into nego-
ations with you as the collective bargaining agency for all

of our employes, we advise you that we will so recognize your organization.

The Falk Corporation,
Herman W. Falk,
Herman W. Falk,
President.

302 BOARD EXHIBIT NO: 22.

Milwaukee, Wis. April 20th 1937

To:
Falk Corp.,
Milwaukee, Wis.

Gentlemen:

Please be advised that Articles of Incorporation of the Independent Union of Falk Employees were filed with the Secretary of State at Madison on Monday April 19th and with the Register of Deeds on the 20th day of April and we are assured that the charter will be issued on Wednesday April 21st.

The members of this corporation will be the employees of your company, not including officers, executives, assistant officers, assistant executives, superintendents, assistant superintendents, foremen or assistant foremen.

The business and purpose of the corporation includes the right to act as the representative of its members in entering into contracts with you, as their employer, for the purpose of collective bargaining.

The undersigned were the organizers of this corporation.

The first meeting of its members will be held shortly, at which time a Board of Directors and officers will be elected.

We are attaching hereto a copy of the application being signed by the members.

We are informed that approximately 400 employees of your company have signed applications to date and we have good reason to believe that a majority of the employees eligible for membership, will become members of this organization.

We respectfully request that you fix a time and place where the undersigned may meet with you to discuss the question of collective bargaining on behalf of the members of the Independent Union of Falk Employees.

Yours very truly,
Carl Menz,
Joseph H. Trost,
Fred S. Wilson,
Organizers.

94 BOARD EXHIBIT NO. 27.

By-Laws.

Article I.

Meetings of Members.

1. The annual meeting of the members of this corporation nall be held at such place in the City of Milwaukee, State of Visconsin, as the Board of Directors may determine; said eeting shall be held at 1:30 o'clock, in the afternoon, on the rst Sunday in May, beginning with the year 1938, at which me there shall be elected by the members of said corpora- on, a Board of thirteen (13) Directors, for the ensuing year, nd the members shall transact such other business as shall roperly come before them.

2. A majority in number of the members of the corpora- on shall constitute a quorum for the transaction of business.

3. A notice specifying the time and place of such annual eeting of the members of said corporation shall be given by ie Secretary, in such manner as may be provided by the oard of Directors, but in such a way that each member of ie corporation will have at least three (3) days' notice of ie time and place fixed for said annual meeting.

4. If a quorum be not present at the annual meeting, the embers present may adjourn to such future time as may be greed upon by them. A notice of such adjourned meeting all be given in the same manner, as provided for herein for e holding of said annual meeting.

5. If a quorum is present, the said meeting may be ad- urned from day to day, and no notice of such adjournment ed be given.

6. A special meeting of the members of said corporation ay be called at any time by the President, or by seven (7) embers of the Board of Directors, provided at least two (2) ys' notice be given to the members thereof, such notice to given as required for the annual meeting of said corpora- n. Regular monthly meetings of the members will be held the first Saturday in each month at the hour of 2:30 P. M.

Article II.

Meetings of Directors.

.. Regular meetings of the Board of Directors of the said poration shall be held at 3:00 o'clock P. M., on the first

Saturday of each month, at such place as may be designated by the President. Special meetings of said Board of Directors may be called by the President or by seven (7) Directors, by giving twenty-four (24) hours' notice to each Director; said notice may be given verbally, or in writing. Said meetings shall be held at the hour and place to be specified in ad-
395 vance by the President of the Board of Directors.

2. Meetings of the Board of Directors may be held at any time or place where all of the Directors are present and consent to the holding of such meeting.

3. A majority of the Directors shall constitute a quorum.

4. The Directors shall have the general power of governing the said corporation, including the right to elect a President, a Vice-President, a Treasurer and a Secretary of said corporation. The officers shall be selected from the Board of Directors.

5. The Directors shall exercise all the powers that may be exercised, or performed, under the Articles of Incorporation, and By-Laws of said corporation.

6. The order of business at all meetings of the Board of Directors shall be as follows:

(a) Roll call.

(b) Reading of the Minutes of the preceding Meeting, and action thereon.

(c) Reports of Officers.

(d) Reports of Committees.

(e) Unfinished Business.

(f) Miscellaneous business.

(g) New business.

Article III.

Officers.

1. The officers of this corporation shall consist of a President, a Vice-President, a Secretary and a Treasurer. The duties of any of the general officers of the corporation, other than President and Vice-President may be combined.

2. The President shall preside at all meetings of the Board of Directors, and at all meetings of said corporation, and shall have general supervision over the affairs of said corporation, subject to the action of the Board of Directors.

3. The Vice-President shall perform such duties as may be assigned to him by the Board of Directors. In case of death, disability or absence of the President, he shall perform and be vested with all the duties and powers of the President.

4. The Secretary shall keep a record of the minutes of the proceedings of the meetings of the Directors, and members of the corporation, and shall be responsible for the giving of notice, as required by these By-Laws, of all meetings required herein, and shall keep a full and complete list of all members of the corporation. He shall have the custody of all 396 books, records and papers of the corporation, except such as shall be in charge of the Treasurer, or of some other person authorized to have such custody and possession, by resolution of the Board of Directors.

5. The Treasurer shall keep an account of all moneys of the said corporation, received or disbursed, and shall deposit all moneys in the name of and to the credit of the said corporation, at such banks and depositaries, as the Board of Directors shall designate. All checks for the payment of money shall be signed by the Treasurer, and countersigned by the President, or Vice-President. The Treasurer shall furnish a bond, in such sum as may be designated by the Board of Directors, in a Bonding Company to be approved by the Board of Directors, and the premium for said bond is to be paid for out of the funds of the corporation.

Article IV.

Vacancies.

In case of death, disability, resignation, or otherwise, of one or more of the officers, or directors, the remaining directors, although less than a quorum, shall fill the vacancies for the unexpired term.

It is contemplated that the Directors will be selected from the various departments of the employer. Before a vacancy in the Board is filled, the remaining Directors will consult with the members of the department where the retiring Director was employed and obtain the suggestions from those members, as to who shall be appointed to fill said vacancy.

Article V.

Compensations.

1. No officer or member of any Committee shall receive any compensation for his or her services, except as hereinafter provided.

2. Compensation for all officers. Compensation for all officers shall be fixed from time to time, by resolution of the Board of Directors.

3. No officer, excepting the Secretary, shall receive any salary. However, the Directors may be compensated for time actually lost from employment in performing their duties as members of the Board.

Article VI.

Dues.

The amount payable, as membership dues, shall be fixed from time to time, by resolution of the Board of Directors, but in no event shall the dues exceed Fifty Cents ($.50) per month per member.

397 Every member of said corporation shall be subject to the payment of dues from and after his or her application for membership is accepted in said corporation.

Article VII.

Certificate.

The corporation shall cause to be issued to each member, a certificate in substantially the following form:

"Independent Union of Falk Employees.

Official Membership Card.

Certificate No._____. Date_____.

This is to certify that_____,
Clock No._____, residing at number_____,
is a member of the Independent Union of Falk Employees, a Wisconsin corporation, in good standing at the date hereof, and is entitled to all the benefits and privileges of said corporation.

_____
(Corporate Seal) *President.*
Countersigned by:

_____
Secretary."

The certificates so issued shall be numbered consecutively and shall be signed by the President, or Vice-President, and countersigned by the Secretary, or Assistant Secretary, and shall have affixed thereto the corporate seal, the name of the member, his number, his place of residence and the date of issuance.

The Secretary shall keep an exact record of all said certificates so issued and a record of the cancellation of said certificates, if any such are cancelled.

Article VIII.

Suspension.

Any member may be suspended from membership in said corporation for misconduct, or neglect of duties, and obligations prescribed by the By-Laws of the corporation; also for non-payment of the dues for four (4) months, and non-appearance at six (6) successive regular meetings of the members of said corporation.

3971 Article IX.

Amendment.

By-Laws may be adopted, amended or repealed at any annual meeting of its members, or at a special meeting of its members called for that purpose by the vote of a majority of the members.

408 BOARD EXHIBIT NO. 32.

Application

I hereby apply for membership in corporation or association to be organized by the employees, not including executives, assistant executives, officers, assistant officers, superintendents, assistant superintendents, foremen or assistant foremen of Falk Corp. of Milwaukee.

The purpose of said organization shall be to aid its members in the regulation of wages, hours, conditions of employment, including the right to act as the representative of its members in entering into contracts with their employer for the purpose of collective bargaining.

If said proposed organization is formed and I am accepted as a member, I agree to be bound by the Articles of organization and By-Laws.

I further agree to submit to the Board of Directors of said organization, any dispute between myself and my employer, pertaining to wages, hours, working conditions, or other mutual aid or protection and to abide by the decision of said Board.

I expressly nominate and appoint the Board of Directors of said organization to be selected, as my representative for the purpose of collective bargaining.

If I am accepted as a member in said organization, I agree

not to withdraw without giving at least ten (10) days' written notice.

In the event I am accepted as a member and withdraw I agree to forfeit my rights as a member unless otherwise ordered by the Board.

Clock No. Name Address Date

410 BOARD EXHIBIT NO. 34.

Milwaukee, Wisconsin,
May 4, 1937.

Milwaukee Operating Engineers, Local No. 311,
American Federation of Labor,
2401 West Wisconsin Avenue,
Milwaukee, Wisconsin.

Gentlemen:

The undersigned employe of The Falk Corporation hereby withdraws the application signed by him for membership in the Milwaukee Operating Engineers, Local No. 311, and asks that the fee paid by him be returned.

Very truly yours,

Lawrence O. Frank.

Address 1238 S 25th St.

412 BOARD EXHIBIT NO. 36.

The following men are members of Local Union No. 311:

Mr. L. Frank February 27, 1937.
Mr. J. Yunkovich February 27, 1937.
Mr. Wm. Brandt February 27, 1937.
Mr. G. Achterberg March 5, 1937,
Mr. A. Ottman March 9, 1937.
Mr. M. Nessman March 13, 1937.
Mr. C. Schnader March 15, 1937.
Mr. M. P. Gaherty March 21, 1937.
Mr. C. Hergenroeder March 21, 1937.
Mr. J. McCarthy March 26, 1937.
Mr. Chas. Chase March 26, 1937.
Mr. M. Trebiloski March 26, 1937.
Mr. J. A. Jensen March 31, 1937.
Mr. Wm. Sivright June 15, 1935.

414 BOARD EXHIBIT NO. 38.

Milwaukee, Wis.
April 27th 1937

Mr. Fred Douglas,
R. 5, Box 390
West Allis, Wis.

Dear Sir:

Wont you please get in touch with Mr. Harold Falk by 'phone or personally at your earliest opportunity and oblige,

Yours very truly,
Bernard Moebus
Secretary, Independent Union of Falk Employees.

Notice!

A meeting of the employees, not including superintendents, assistant superintendents, foremen or assistant foremen, of the Falk Corp. will be held on Sunday afternoon, April 18th, 1937, at 1:30 o'clock at 3116 West North Avenue, Milwaukee, Wisconsin, to consider the question of organizing for the purpose of collective bargaining.

Bring Employee's Pass.

All employees are invited to attend.

At the request of the Committee.

NATIONAL LABOR RELATIONS BOARD
CASE NO. XII-C-85 BOARD PETITIONER RESPONDENT EXHIBIT NO. 3
IN THE MATTER OF Falk
DATE 8/18/37 WITNESS Siegel
ETHEL E. FISHER, OFFICIAL REPORTER
BY [illegible]

Respondent's Exhibit No. 6

THE FALK CORPORATION

PLANT COMMUNICATION

DATE

The Shop Council regular meeting was held on Thursday April 8 1937 and I asked for permission of Mr H. Falk whether we could arrange to have a meeting with the corporation officers of the Council and it was granted. Therefore I as chairman of the Council told Mr Snyder to notify all representatives that a meeting would take place on Mon April 12 at 1:30 P.M. On or at the date of the meeting I asked Mr. Snyder whether he notified all members etc slipped his mind but got busy and telephoned to who he could get. At this meeting I was chosen as Chairman and I read a letter which I myself had written on it read some to the members that were present. The letter read was part of the Council members and councilmen as you all know by now there is a bill pending in the Legislature at Madison which is the so called The Small Wagner labor relations bill We today are facing a serious problem more than some of us think about due to the fact that Shop Council will be abolished if enacted in law and it is up to us older employees of the Falk Corp to work for peace & harmony and create our own union which is according to my opinion legal under the Wagner labor act.

SIGNED

VERBAL INSTRUCTION NOT ACCEPTED

THE FALK CORPORATION

PLANT COMMUNICATION

FORM 31-1 800 2-49

DATE

Due to a lengthy discussion at this meeting I as chairman appointed a member by the name of Frank Kolash to notify Mr Falk of attending the meeting As Mr Falk entered the meeting I asked him to take the floor and give us some information regarding the Ohio State Labor Act And he informed the members that were present that he did not understand the bill thoroughly but said this that we could choose any of organizations which we may seem fit or choose a union of our own according to said bill The meeting adjourned and I had to leave the plant at 2-30 P.M due to illness on Mon April 12 and returned back to work on Wed April 21 In the Meantime Mr. John Wolf was chosen a temporary chairman

SIGNED

VERBAL INSTRUCTION NOT ACCEPTED

427 RESPONDENT'S EXHIBIT NO. 8.

Foremen & Asst. Foremen on hourly wage payroll as of 4/23/37—5/5/37—6/15/37.

Clock#	Name
2032	Frank Strehlow Scrap Yard
2052	Geo. Grudichak Scrap Yard—Night
2202	Eugene Schowalter Core
2301	Jos. Dohse Core
2404	Mark Peranich Cleaning Room
2402	Joe Gagliano Cleaning Room
2405	Walter Berry Cleaning Room
24200	Pietro Tarcivia Cleaning Room—Night
2501	J. E. McCarville Small Molding
2502	Frank Neal Small Cleaning Room
2801	Phil Nowak Pattern Storage
2903	A. J. Andorfer Gen. Foundry
2910	Art. W. Cain Foundry—Night
2911	Walter Maloy Foundry—Night
30118	Chas. Klotz Fdry Flasks
3102	Wm. Schmidt Small Molding—Appr. Instructor
3103	Martin Wald Small Molding Foreman
5006	Robert Whitehead Mach. Shop
5007	Chas. Wolter Mach. Shop
5008	C. B. Seal Mach. Shop
5010	Leslie Rock Mach. Shop
5011	Henry Hilse Mach. Shop
5012	W. Bartels Mach. Shop
5013	M Krolikowski Mach. Shop
5015	Theo. Metzelfeld Mach. Shop
5016	Fred Raffel Mach. Shop
5017	Geo. Thompson Mach. Shop
5018	Law. Detchars Mach. Shop
5020	J. C. Gebhardt Mach. Shop Chief Inspector
50103	Joe Hahl Mach. Shop
50173	Frank Proft Mach. Shop.
50405	H. J. Marshal Mach. Shop Died 5/10/37
50404	A. Henderson Mach. Shop Since 5/11/37
50254	Pat. McAndrew
50562	Pat Feely Mach. Shop
428 50654	Frank Denomic Mach. Shop (Hitcher crew)
6002	Frank Gauer Pattern Shop
6201	John Grutza Brass Fdy.
6401	Geo. Rebotzki Flash Shop
6707	Bernhard A. Koch Welding
6708	H. Hedberg Welding
6710	Ainslie D. McMillan Welding

6800 George Given Heat Treat
7002 Ed. Meyer Power House
7201 John Mitchell Electrical Maintenance
7202 Ferd. Schmalzer Electrical Maintenance
7304 Frank Holub Mechanical Maintenance
7401 J. Wieczorek Carpenter
7424 Herman Knauer Painter
7435 Ferry Zweck Tinshop
7601 Geo. Zunker Yard
7602 John Kempski
7647 Max Haimerl Watchman
7701 Louis Gronczewski Stores

These men are all included in the list of manufacturing divisions submitted in my testimony of Aug. 24, 1937.

The Falk Corporation
Jos. B. Cibulka

429 RESPONDENT'S EXHIBIT NO. 9.

Aug. 24, 1937.

Ex-Works Council Members who attended the meeting held on April 8, 1937.

Clock #	Name
50276	Don Feilbach
50304	Dan Martin
5024	R. Loitfellner
50632	Frank (Brandt) Wutschek
6729	Wm. Stickman
2433	G. Kassin
2226	Herm. Schneider
3151	M. Gagliano
6003	Elmer Kothrade

No deduction was made from the pay of these men for the time spent at this meeting.

The Falk Corporation
Jos. B. Cibulka

451 RESPONDENT'S EXHIBIT NO. 12.

June 24, 1937.

Neither the National Labor Relations Act, Known As the Wagner Act, Nor the Wisconsin Labor Relations Act Requires the Employer to Permit the Collection of Dues For Any Union On Company Premises. We Wish to Announce That We Are Not Agreeable to the Collection of Such Dues For Any Organization On Company Premises.

The Falk Corporation.

NOTICE!

to the Employees of the Falk Corporation -

Some of the employees have organized the Independent Union of Falk Employees, a Wisconsin corporation. A great many applications for membership have been signed. All employees, not including officers, executives, assistant officers, assistant executives, superintendents, assistant superintendents, foremen or assistant foremen, may become members.

A meeting of the organizers and applicants for membership will be held on Saturday, April 24th 1937 at 2:00 P. M. at 3116 West North Ave. for the purpose of completing the organization, electing directors and officers and to discuss things that the employees feel should be taken up with our employer.

All who have signed applications and those intending to do so should attend this meeting.



453 INDEPENDENT UNION EXHIBIT NO. 2-A.

Articles of Incorporation

These Articles of Agreement and Incorporation, made and entered into this 19th day of April, A. D. 1937, by and between the persons whose names are hereunder subscribed.

Witnesseth: That we, the undersigned, do hereby mutually agree each with the other and do make the following declarations, to-wit:

1. That we, and each of us, are adult residents of the City of Milwaukee, County of Milwaukee, and State of Wisconsin.

2. That we associate together for the purpose of forming a corporation under the Wisconsin Statutes.

3. That the business and purpose of said corporation shall be to aid its members in becoming more skillful and efficient workers; the promotion of their general intelligence; the elevation of their character; the regulation of their wages, their hours, and conditions of employment; the protection of their individual and collective rights in the prosecution of their employment; the raising of funds for the benefit of sick, disabled or unemployed members, or the families of deceased members; and for such other lawful object, or objects, for which working people may combine, having in mind the mutual aid and protection of its members, and including the right to act as the representative of its members in entering into contracts with their employer, for the purpose of collective bargaining.

4. The name of said corporation shall be Independent
454 Union of Falk Employees, and its location shall be in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

5. The corporation shall be Non-stock and no dividends or pecuniary profits shall be declared to the members thereof.

6. The several general officers of the corporation shall be a President, a Vice-president, a Secretary and a Treasurer, and a Board of Directors, consisting of thirteen (13) members.

The duties of any of the general officers of the corporation, other than President and Vice-President, may be combined.

All of the said officers shall be elected for a period of one (1) year, or until their successors have been elected and qualified.

The officers shall be elected by the directors, who shall first be elected by members of the corporation.

7. The President shall preside at all meetings of the Board of Directors; call all meetings of the corporation as provided herein; call special meetings of the Board of Directors, upon the giving of the proper notice, and shall perform such other duties, as are ordinarily performed by a President, and shall act as Chairman of the Board of Directors.

The Vice-President, in the absence of the President, shall perform all duties, and shall have all the powers hereinabove specified to be exercised, or performed, by the President.

The Secretary shall attend all meetings of the Board of Directors, and keep an accurate record of all meetings and proceedings thereof. The Secretary shall attend all meetings of the corporation, act as Secretary thereof, and keep 455 accurate minutes thereof, and shall keep a full and complete list of the names and addresses of the members of the corporation.

The Treasurer shall receive all dues for membership in the corporation; shall issue proper receipts therefor; shall keep accurate books of account of all dues, and other moneys received by him, as such Treasurer, and of all disbursements made, and shall, as such Treasurer, be responsible for all dues and other moneys received by him, and be required to give a surety bond for the faithful performance of his duties, as Treasurer, the said bond to be in a sum fixed by the Board of Directors. The Treasurer shall be authorized to sign checks for disbursements, only upon the direction of the Board of Directors, which said checks shall be countersigned by the President of said Board of Directors.

The Treasurer shall deposit all funds of the corporation, except such sums as shall be directed to be invested in such interest-bearing securities, as the Board of Directors may select, in a depositary to be designated by the Board of Directors.

Any sum or sums invested by order of the Board of Directors shall be held in the name of, and as the property of the corporation.

8. The Board of Directors shall act as a supreme governing body of the corporation, and shall have the right to hear and determine any claim, or claims, made by members of the corporation against other members of the corporation, and to hear and determine the complaints and grievances made by and between members of the corporation, and hear the com-

plaints and grievances made by any member of the cor-
456 poration against Falk Corp. arising out of conditions of employment and the regulation of wages or hours, and the Board of Directors shall upon finding of a majority of its members, that any claim, complaint or grievance to conditions of employment, or the regulation of wages or hours, is justified, present, on behalf of the corporation, and the complaining member, such claim, complaint or grievance, to the management of the Falk Corp. In presenting said claims to the employer, the Board of Directors shall act as the representative of each member of the corporation.

The Board of Directors shall meet at 7:30 P. M. on the first Thursday of each month, at such place as may be designated by the President.

Said Board of Directors shall be authorized to hold special meetings upon the request of the President of said corporation, upon the giving of 24 hours' notice.

Said Board of Directors shall have the right to classify all members of said corporation, so as to enable them to negotiate with said employer as to the nature of employment, the regulation of hours, the wage scale, or piecework scale to apply to any such member as so classified.

The Board of Directors shall have the sole right to act as the representatives of the members of the corporation in all negotiations with the Falk Corp. for the purpose of collective bargaining, affecting conditions of employment, regulation of wages or hours, or other mutual aid or protection.

9. The corporation shall be composed of employees of the Falk Corp. of Milwaukee, Wisconsin, not including officers, executives, assistant officers, assistant executives, superintendents, assistant superintendents, foremen, or assistant
457 foremen; each member shall be entitled to all rights, privileges and benefits of the corporation during the time said member is employed by the Falk Corp. and remains in good standing in the corporation.

Any person making application for membership to the corporation, shall sign a written application; said application shall be acted upon by the Board of Directors within four (4) days after receiving said application; the Board may accept or reject any application.

Any applicant, whose application is rejected by the Board may resubmit his application to the members of the corporation, at any meeting of the corporation. In the event that two-thirds (2/3) of the members present at said meeting vote in

favor of accepting said application, said applicant shall be admitted to membership.

The members of said corporation shall pay an initiation fee and a monthly fee in such an amount as may be determined by the Board of Directors.

The members may be discharged or expelled for mis-conduct or neglect of duties and obligations prescribed by the By-laws of the corporation, also for non-payment of the fees and assessments for four (4) months and non-appearance at six (6) successive regular meetings and engagements of the members of the corporation.

10. The corporation shall hold its first meeting for the election of officers on the 25th day of April 1937 at 1:30 P. M. at number 3116 West North Avenue, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

11. These Articles of Incorporation may be amended by resolution, setting forth such amendment or amendments adopted at any meeting of the members by a vote of at
458 least one-half (1/2) of all of the members of the corporation.

12. The seal of the corporation shall be circular, about two inches in diameter, with the name of the corporation engraved around the margin and Corporate Seal engraved across the center. It shall remain in the custody of the Secretary and shall be affixed to all certificates of membership, and to all other instruments requiring a seal. If deemed advisable by the Board of Directors, a duplicate seal may be kept and used by any other officer of the corporation.

In Witness Whereof, we, the persons who make the above and foregoing Articles of Agreement, have hereunto subscribed our names and affixed our seals respectively, the day and year first above written.

In the presence of
Adelheid Nack,
Giles F. Clark.

Carl Menz, (Seal)
Joseph H. Trost, (Seal)
Fred C. Wilson, (Seal)

459 State of Wisconsin, } ss.
Milwaukee County. }

Be it remembered that on the 19th day of April A. D. 1937 personally appeared before me the above named, Carl Menz, Joseph H. Trost and Fred C. Wilson, to me personally known to be the persons who made, signed and executed the above and foregoing Articles and acknowledged the same.

Giles F. Clark,
(Seal) *Notary Public, Milwaukee County, Wisconsin.*

My commission expires April 6, 1941.

460 State of Wisconsin, } ss.
Milwaukee County. }

Carl Menz, Joseph H. Trost and Fred C. Wilson, being each for himself first duly sworn, on oath says; that he is one of the signers of the original Articles of Incorporation of Independent Union of Falk Employees, a copy of which Articles are hereto attached; that said attached copy is a true and correct copy of the original Articles of said incorporation, and the whole thereof.

Carl Menz,
Joseph H. Trost,
Fred C. Wilson.

Subscribed and sworn to before me this 19 day of April, A. D. 1937.

Giles F. Clark,
(Seal) *Notary Public, Milwaukee County, Wisconsin.*

My commission expires April 6, 1941.

461 EXHIBIT NO. 2-B.

Minutes of the first meeting of the incorporators of Independent Union of Falk Employees, held at 3116 West North Ave. in the City of Milwaukee, on the 24th day of April, 1937 at the hour of 2 o'clock P. M. pursuant to the following waiver of notice and consent to the holding of said meeting, signed by all of the incorporators of this corporation:

We, the undersigned, being all of the incorporators of the Independent Union of Falk Employees, do hereby severally waive notice of the time, place and purpose of the first meeting of all of the incorporators of said company and do hereby call said meeting and consent to the holding thereof at number 3116 West North Ave. in the City of Milwaukee, Wisconsin on the 24th day of April 1937 at the hour of 2 o'clock P. M. of said day; and we do hereby severally consent to the transaction of any and all business that may come before said meeting, including the perfecting of the organization of said corporation, the consideration of applications for membership, the adopting of a code of By-Laws and the electing of a Board of Directors.

Dated this 24th day of April A. D. 1937.

Carl Menz
Joseph H. Trost
Fred C. Wilson

The meeting was called to order by Joseph H. Trost, one of the organizers of said corporation.

Thereupon, said meeting proceeded to organize and upon motion duly made, seconded and unanimously carried, Albert W. Prodoehl was elected Chairman of said meeting and thereafter acted as such.

Thereupon, on motion duly made, seconded and unanimously carried, Victoria E. Worke was elected Secretary of said meeting and thereafter acted as such.

Thereupon, the applications for membership to this corporation were presented to the meeting and they totalled 693 in number.

Thereupon, upon motion duly made, seconded and unanimously carried, all of said applications for membership were

accepted, subject to the approval of the Board of Directors, to be elected and as provided for by the Articles of Incorporation of this company.

The Secretary thereupon reported that the applications so acted upon totalled 693 in number.

Thereupon, the incorporators reported that they had caused to be prepared and filed in the office of the Secretary of State a verified copy of the Articles of Incorporation of this corporation, and they had paid the required filing fee to said Secretary of State and had caused to be filed in the office of the Register of Deeds of Milwaukee County, State of Wisconsin, a copy of said Articles, duly certified by the Secretary of State, and had received from said Secretary of State the Certificate of Incorporation.

462 After a full examination of said Articles and said Certificate of Incorporation, upon motion duly made and seconded, the following resolution was unanimously adopted and ordered spread at length upon the records of this meeting.

Resolution

"Be It Resolved: That the Articles of Organization of this company and the Certificate of Incorporation, be and the same are hereby approved and ordered made a part of the records of this corporation and that all action taken by said incorporators in connection therewith, be, and the same is hereby ratified, approved and confirmed; and

Be It Further Resolved: That this corporation shall pay any and all legal and other expenses incurred in connection with its incorporation and its organization; the amount thereof to be subject to the approval of the Board of Directors."

Thereupon, the meeting proceeded to consider By-Laws and after a thorough consideration of the By-Laws and a full and complete discussion thereof, and all of those present being fully conversant therewith, the following By-Laws, on motion, duly made and seconded were adopted as and for the By-Laws of this corporation, to-wit:

(By-Laws)

Thereupon, the members proceeded to the election of a Board of Directors, and the following were duly elected Direc-

tors to hold office until the next annual meeting or until their successors were elected and qualified:

Albert W. Prodoehl
Fred C. Wilson
William G. Ewart
Louis J. Kubricky
Frank J. Van Den Heuvel
William Stichmann
Frank Ruscitti
John F. Mitschka
Joseph H. Trost
W. M. Ladwig
Stanley J. Adamski
Bernard Moebus
Dan Martin

There being no further business the meeting was adjourned.

Albert W. Prodoehl
Chairman of said Meeting.

Attest:
Victoria E. Worke
Secretary of said Meeting.

463 Minutes of The First Meeting of The Board of Directors.

Minutes of the first meeting of the Board of Directors of Independent Union of Falk Employees, held at 3116 West North Ave., on the 24th day of April A. D. 1937 immediately following the first meeting of the organizers and members, pursuant to the following waiver of notice and consent to the holding of said meeting signed by all of the Directors of this corporation on the records of said meeting, to-wit:

We, the undersigned, being all the Directors of the Independent Union of Falk Employees elected to said Board at the first meeting of the incorporators and members of said corporation, held this day, do hereby severally waive notice of the time, place and purpose of the first meeting of said Board of Directors and do hereby call said meeting and consent to the holding thereof at this time and place, to-wit: number 3116 West North Ave. in the City of Milwaukee on the 24th day of April, 1937, immediately following the adjournment of the said first meeting of the organizers and members of said corporation and we do hereby severally con-

sent to the transaction of any and all business that may come before said meeting.

Albert W. Prodoehl
Fred C. Wilson
William J. Ewart
Louis J. Kubricky
Frank J. Van Den Heuvel
William Stichmann
Frank Ruscitti
John F. Mitschka
Joseph H. Trost
W. M. Ludwig
Stanley J. Adamski
Bernard Moebus
Dan Martin

The meeting was called to order by Albert W. Prodoehl, one of the Directors.

Thereupon, on motion duly made, seconded and unanimously carried, Albert W. Prodoehl was elected temporary Chairman of the meeting, and thereafter acted as such.

Thereupon, on motion duly made, seconded and unanimously carried, Fred C. Wilson was elected temporary secretary of the meeting and thereafter acted as such.

Thereupon, the Directors proceeded to the election of 464 officers; and on motion duly made and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That Fred C. Wilson be, and he is hereby, chosen President of this corporation; that Albert W. Prodoehl be, and he is hereby, chosen Vice-President of this corporation; that Bernard Moebus be, and he is hereby chosen Secretary of this corporation; that Stanley J. Adamski be, and he is hereby, chosen Treasurer of this corporation."

Thereupon, the said Fred C. Wilson and said Bernard Moebus, respectively, began the discharge of their duties as such respective officers and thereafter acted as permanent Chairman and permanent Secretary of the meeting.

Thereupon, at the direction of the President, the Secretary read the minutes of the first meeting of the members of this corporation held upon this day and the code of By-Laws adopted at said meeting; and, after a full and complete discussion of said minutes, and said By-Laws, and of all action taken at said meeting, the following resolution was duly made, seconded and unanimously adopted:

"Be It Resolved: That all action taken by the members of this corporation at their first meeting, including the adoption of By-Laws, and the By-Laws so adopted by them be, and the same are hereby, ratified, approved and confirmed.

"Be It Further Resolved: That all resolutions adopted and all motions carried at said meeting and the By-Laws adopted at said meeting be, and the same are hereby, reenacted and adopted by this Board of Directors, with the same force and effect as though herein set forth at length and made a part thereof."

Thereupon, the following resolution was duly made, seconded and unanimously adopted:

"Be It Resolved: That this corporation does hereby accept the applications to membership of this corporation as the same appear from the written applications submitted at the meeting of its members this day held, excepting the application of Ernest Dearth held for further consideration.

Be It Further Resolved: That said written applications for membership be forthwith filed with the Secretary and said Secretary is hereby authorized and directed to make a permanent record of said written applications for membership in this record book, by writing therein the name, address and clock number of each applicant."

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That until it shall by resolution otherwise determine, the Board of Directors of this corporation shall hold regular meetings thereof at such place as the President made determine, on the first Saturday of each month hereafter, at the hour of 3:00 o'clock, P. M."

465 Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the Mitchell Street State Bank, of the City of Milwaukee, State of Wisconsin be, and it is hereby, selected and designated as the depositary of and for the moneys and funds of this corporation; that all of the moneys and all of the funds of this corporation shall hereafter be deposited in and with said Bank and that such moneys and funds may be withdrawn only upon checks, orders and drafts signed by the Treasurer and countersigned by the President or Vice-President of this corporation."

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the Certificate of Membership shall

be in form substantially as that set forth in the minutes of the first meeting of the organizers and members this day held."

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the Secretary shall at once procure for the corporation a sufficient number of certificates referred to in the preceding resolution and a corporate seal for this corporation, which seal shall have inscribed thereon the name of this corporation and the words 'Corporate Seal' and 'Independent Union of Falk Employees'; and that such seal shall be, and the same is hereby adopted as and for the corporate seal of this corporation, and that for the purpose of identification, the said Secretary is hereby directed to impress said seal upon the page of the record where this resolution appears." (Seal)

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the amount payable by each member of this corporation, as dues, is hereby fixed and determined in the sum of Fifty Cents ($.50) per month, payable in advance, the first payment to be made on or before the first day of May 1937 and the said payment shall constitute the dues for the month of May, 1937. Thereafter the dues to be paid on the first day of each month, in advance."

Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the Board of Directors of this corporation, be and they are hereby authorized to notify the Falk Corp. of the organization of this corporation and request that said Board be recognized as the representative of all of the members of this corporation for the purpose of collective bargaining, and that the President and Secretary of this corporation, be and they are hereby, authorized to list the name of this corporation with the Wisconsin Labor Relations Board, as provided by law."

466 Thereupon, on motion duly made, and seconded, the following resolution was unanimously adopted:

"Be It Resolved: That the position of Assistant Secretary of this corporation be, and the same is hereby, created; said Assistant Secretary to have the usual powers and perform the usual duties of an Assistant Secretary.

Be It Further Resolved: That Miss Victoria E. Worke, be, and she is hereby, elected Assistant Secretary, to hold office until the next annual meeting or until her successor is elected and qualified.

Be It Further Resolved: That the Board of Directors as representatives of the members of this corporation, meet with the management of Falk Corp. on Monday afternoon, April 26th 1937 at 4 o'clock P. M. for the purpose of discussing increase in wages, working conditions and other matters.

Be It Further Resolved: That the President and Secretary of this corporation, cause this corporation to be listed as a labor organization with the Wisconsin Labor Relations Board.

Be It Further Resolved: That this meeting is adjourned until Saturday, May 1st, 1937 at the hour of 3 o'clock, P. M.

There being no further business the meeting adjourned.

Fred C. Wilson
President.

Attest:
Bernard Moebus
Secretary.

467 The first meeting of the Independent Union of the Falk Employees was called to order at 2:30 P. M. on Saturday, April 24th, 1937 at the North Avenue Auditorium.

Mr. Albert Prödehl presided as temporary Chairman. Miss Victoria Worke as temporary secretary. Mr. Fred Wilson, Mr. Joe Trost, and Mr. Carl Minz, signors of the application, acted as committee men.

A motion was made and seconded to accept the six hundred and ninety three applications of the Independent Union. The vote was unanimous.

The By-Laws were read by the temporary chairman and amendments and discussion were given after each paragraph.

It was resolved that the first Saturday in the month, at the hour of 2:30 P. M. be held monthly. A motion was made that the directors hold their meetings after the monthly meetings of the members. The vote was unanimously carried.

Mr. Burke, the attorney, explained that the president of the Union must be from the Board of Directors. It is the duty of the members to see that they select the directors who are to do their collective bargainings. The directors in turn select the officers of the Union, such as the President, Vice-President, Secretary, Assistant Secretary, and treasurer.

Article VI referred to the fees of the Union. It was resolved that fifty cents (50c) be the maximum rate for each month. A suggestion was made that the dues be taken out of the checks; majority of members felt that the Union would

lose the real identity of an Independent Union if the Company meddled with Union fees.

A motion was made and carried that dues be paid at regular monthly meetings. The vote was unanimous.

A motion was made and seconded that the word "assessment" be stricken from Article VIII. Motion was passed.

A motion was made and seconded that the changing of the By-Laws be made at regular annual meetings or at any special meetings called for that purpose.

A motion was in order to accept these By-Laws. The motion was seconded and passed.

The directors were selected from the Departments as follows:

Pattern Shop—Carpenters—Flask Shop	1
Drafting Room—Engineering Department	1
Maintenance—Electricians—Garage	1
Furnace—Ladle—Yards—Truckdrivers	1
Machine Shop	4
Foundry	3
Welder	1
Office—Clerks	1
	13

The thirteen members of the board of directors are:

468 Mr. Mitschka
Mr. A. Prodehl
Mr. F. Wilson
Mr. Van Den Heuvel
Mr. Ben Moebus
Mr. Martin
Mr. Ludwig
Mr. J. Trost
Mr. L. Kabricky
Mr. E. Dearth
Mr. S. Adamski
Mr. W. Stichmann
Mr. W. Ewart

The meeting was adjourned at 4:30 P. M.

Victoria E. Worke.

469 A meeting of the board of directors was held at 4:30 P. M. on April 24th, 1937 on the third floor of the North Avenue Auditorium.

Officers of the Union were elected by the Board of Directors.

Mr. Fred Wilson—President
Mr. Albert Prodehl—Vice-President
Mr. Benn Moebus—Secretary
Mr. Stanley Adamski—Treasurer
Miss Victoria Worke—Assistant Secretary.

MICRO CARD
TRADE MARK ®
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MATTHEW BENDER & COMPANY
1385
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microcard

The By-Laws for the Board of directors were read and accepted.

The new treasurer made a motion that the Mitchell Street Bank be the depository bank for the Union. The motion was carried.

There was a motion made and seconded and unanimously passed that the position of the assistant secretary be at the meeting whereby the client and this board is now authorized to select the assistant secretary. Thereupon Miss Victoria Worke was selected as Assistant secretary with the usual duties of an assistant secretary.

(At end of first paragraph 11.)

Excepting the application of Mr. Ernest Deardth and his application will be reserved for further consideration.

It was decided that the board of directors meet with the employer on Monday afternoon, April 26, 1937 at 4:00 P. M.

The following resolution was unanimously passed that this meeting be adjourned until next Saturday at 2:30 P. M.

Victoria E. Worke,
Assistant Secretary.

470 April 26, 1937.

Your Board of Directors of the Independent Union of Falk Employees met in the main dining room of the Falk Corporation at 4:00 P. M. and presented the following requests to Mr. Harold Falk on Monday, April 26, 1937.

We, the Board of Directors of the Independent Union of Falk Employees, request that effective May 1, 1937, the hourly pay of all employees be increased as follows:

Anyone receiving 50c or less be increased a minimum of 10c per hour and that those now receiving 60c an hour or over be increased a minimum of 5c per hour.

We also request the immediate reinstatement of the following men: Hugo Hahn, Fred Douglas, and James Jacobus.

(Signed) Bernard Moebus,
Secretary.

His reply to the first request was the following:

That some men had received a raise on April 15, 1937, and if he agreed to a 10c an hour minimum raise they would average approximately 15c an hour. After considerable discussion Mr. Harold Falk was asked if he would agree to a minimum raise of 5c per hour to all hourly men, based on their hourly rate as of April 1, 1937. Mr. Harold Falk agreed on a graduated raise with a minimum raise of 5c per hour to all hourly men based on their hourly rate to become effective

May 1, 1937, and that piece work rates would be increased 5%. Mr. Falk stated that going over a payroll of 1300, there was bound to be some mistakes and this should be taken up with the director or director in charge of their department.

The monthly people were also to be increased 5%.

Mr. Harold Falk pointed out that the policy of the company had been to keep their employees on the payroll regardless of age and that these men should not expect to have the earning power of younger men who were more productive. He pointed out that some companies discharge men after a certain age limit.

To the requests of reinstating the men who were discharged, he replied that he had been in touch with Mr. Clark who is the representative for the National Labor Board and after laying the evidence before him, was advised that he was entirely within his rights in discharging these men for conclusive evidence of coercion, but stated that he was willing to cooperate with the Independent Union and take the man back.

Your secretary then got in touch with two of the discharged men and made arrangements for them to meet with Mr. Harold Falk on Tuesday afternoon, and is at present trying to locate the third man.

Mr. Falk then suggested the drawing up of a policy regarding the working conditions, holidays, methods of pay, etc. This he explained would avoid a lot of unnecessary decisions, especially regarding holidays. Whenever there is a holiday, election, etc., there is a lot of unnecessary quibbling regarding the method of pay. He mentioned the fact that most other companies do not pay double time on Sundays and holidays and that some of the men had made a practice of taking off during the week and then working Saturdays and Sundays for overtime pay.

471 The request for the increase of the smoking period was granted. The hours to be from 7:00 to 8:00 A. M., from 12:00 noon until 1:00 P. M. and from 4:30 P. M. on.

Mr. Kubricky brought up the matter of wage adjustment for the seven or eight men who were transferred from the small molding floor to the large molding floor. Mr. Falk promised to look into this and to make any necessary adjustments. Mr. Stickmann complained about a top low top wage for the welders, that some welders were reaching the top goal and had nothing to look forward to. He pointed out that the top scale was below the other shops doing similar work, and requested that the top scale be raised to 90c an

hour. Mr. Falk agreed to it, but with the understanding that they would hear about it if their work did not merit it.

A question of bonus was left open for discussion for the following reasons:

Mr. Harold Falk pointed out that at present he had received the report of the first two months of operation, and that he recalled a foundry statement showing a profit of $10,000.00 for January, and a February report showing a $7,000.00 loss. So the profit for operation for the first two months in the foundry only amounted to $3,000.00. He stated that when you figure they have to operate on a day such as Washington's Birthday, and they have to pay double time, that you could figure that a premium of $5,000.00 was chargeable to the double time operation of the foundry on that day. He also pointed out the fact that at present the company obtained from the bank a $1,000,000 loan and that this must be paid back out of earnings before they could realize a profit, but he by no means closed the question entirely. He stated that they would know about September or October what their approximate earnings would be for the year and at that time be able to re-open the question. He further stated that should they be able to definitely promise a bonus before this time that he would reopen the question himself.

Mr. Van Der Huevel called Mr. H. Falk's attention to the fact that the yard gang were getting no overtime, but were cut to a 40 hour week, while the rest of the plant was working more. He agreed to look into the matter and should the amount of work in the yard permit it, would grant it.

The meeting was adjourned at 5:45 P. M.

Victoria Worke
Secretary.

472 May 1, 1937.

The meeting of the Board of Directors was held directly after the meeting of the Union members on May 1, 1937 at 4:30 P. M.

Mr. Fred Wilson, Presiding.

Mr. Bernard Moebus, acting secretary.

Miss Victoria Worke, assistant secretary.

Since there was no new business, the chairman urged the directors to open a drive to gain new members. Mr. Wilson with Miss Worke were to bet with Mr. Prodehl and the remaining directors that they would get the most members. The loser to buy each member in the board a twenty-five cent drink.

Several bills were brought up and were passed upon to be paid by the secretary. Members who had money taken off their check for time taken off in organizing were to be paid for the amount taken off.

The salary of the two secretaries were discussed. The secretaries were paid for their work during the week of organizing. Mr. Moebus was paid Ten Dollars ($10.00), Miss Worke Fifteen Dollars ($15.00). The monthly rate was not discussed.

Discussion of a new hall was brought up. Each director was to do his part in searching for a new hall in a convenient spot and at a reasonable price.

The meeting was adjourned at 5:30 P. M.

Victoria E. Worke.

473 Minutes of the Independent Union of Falk Employees

held June 5, 1937.

The third monthly meeting of the Independent Union of Falk Employees was held on June 5, 1937 at 2:30 P. M. at the Bohemian Hall.

Mr. Wilson presiding as President.

Mr. Moebus as secretary.

Miss Worke as assistant secretary.

Twelve out of the thirteen directors were present. Mr. Joe Trost absent because of illness.

The minutes of the last monthly meeting were read and approved as read.

The minutes of the Board of Directors were read. They stand approved as read.

Old Business.

A report on the bet among the directors was made. Mr. Prodehl was declared the winner. Mr. Wilson brought in twelve new members. Mr. Prodehl brought in thirteen. The loser to treat all the directors to a twenty-five cent drink.

New Business.

A motion was made and seconded that the Board of Directors ask the management for a wash room for the yard men.

A vacation period was discussed.

A motion was made to ask for a vacation beginning July 1, 937 ending July 6, 1937; to be paid for three days, the 1st,

2nd, and the 6th. Everyone to be included in this vacation. Allowances were to be made for those in the

Payroll
power house
telephone
furnace

these departments to get their three days any other time.

The motion was seconded and carried.

The Tentative Working Agreement was read by the President. The agreement was not discussed until further notice.

A motion was made and seconded that the board of directors ask the management for permission to post on the bulletin the Tentative Working Agreement.

A motion was made to have Independent Union buttons. The motion was carrried.

Another motion was made to have the Board of Directors get samples from concerns handling buttons then bring the samples at the next meeting for a vote. The motion was carried.

474 A motion was in order that the Independent Union buttons to be permanent ones. The motion carried.

A suggestion was made to have the secretary state approximately the number of Independent Union members. Mr. Moebus, seretary, stated that there were 800 or more members.

It was resolved that the meeting be adjourned. The meeting was adjourned at 4:15 P. M.

Victoria E. Worke,
Assistant Secretary.

475 Meeting of the Board of Directors
June 5, 1937.

Mr. Wilson presiding as president.
Mr. Moebus secretary.
Miss Worke assistant secretary.
No old business brought up.

New business. A suggestion was made to have members of the union present their grievances to the directors in charge. It was suggested that this idea be brought up before the members.

A motion was made and seconded that Mr. Wilson make an appointment with the management on Monday in order to bring up the requests made by the members.

The president mentioned that he knew of several firms in which he would get in touch with concerning the buttons but

stated that if any of the directors knew of other firms, to get in touch with them also.

The salaries of the two secretaries were discussed. Mr. Moebus and Miss Worke both received $20.00 each.

It was resolved that the meeting be adjourned. The meeting was adjourned at 5:30 P. M.

Victoria E. Worke,
Assistant Secretary.

476 Minutes of a Meeting Held With the Management June 7, 1937.

A meeting held with the management on Monday, June 7, 1937 at 4:00 P. M. in the main dining room of the Falk Corporation.

Ten out of the thirteen directors were present.

The first request brought up before the management was the vacation period beginning July 1, 1937 through July 6, 1937—to be paid for the 1st, 2nd, and 6th.

Mr. H. S. Falk stated that the discussion of a bonus would come up if the vacation period was granted, thus detracting from the shop earnings.

In case the plant is shut down for a day, the following expenses which may be classed as fixed or continuing, will not be absorbed in cost of production, and so become a direct charge against profit and loss:

Depreciation and Insurance	$1,000.00
Property taxes	250.00
Fixed salaries (except officer), overhead expenses of sales and administration (advertising, branch offices, research, supplies, etc., but not including commissions or reserves for bad debts)	1,100.00
Interest	200.00
	$2,550.00

In addition to the foregoing, the loss of net profit on one day's production of $25,000.00 average would be $1,250.00 on a 5% basis. This makes a total of $5,500.00 less through closing except fixed monthly salaries. If wages were paid to all employees, the additional loss would be around $7,000.00 per day, a total of approximately $12,500.00 per day.

There would no doubt, be other expenses not so obvious or capable of estimating, such as furnace attendants, power plant employees, etc.

Mr. Falk felt that those already getting vacations such as the power house, and the office employees were not to be entitled to another vacation; but stated that he would consider the matter and give his decision within a few days.

The second request made was asking permission to place on the bulletin board the Tentative Working Agreement.

Before giving his permission Mr. H. S. Falk stated that it would be wiser to condense this statement. Mr. Falk also suggested that instead of calling this a Tentative Working Agreement that it be changed in form to a statement of policy.

By condensing this form you could still serve the purpose leaving out a good many of these details but touching each statement so that we could later arrive at a mutual understanding.

477 It was later suggested that a copy be made for each employee in the shop instead of placing a copy on the bulletin board.

The third request brought up was somewhat of an individual case. Those men who were making 50c an hour or less were to receive a minimum rate of 10c per hour. Mr. Wilson brought up the fact that one man in the heat treating department did not get the 10c minimum rate but a 5c rate and asked that this be fixed with back pay as of April 1, 1937. Mr. H. S. Falk said that this would be taken care of immediately and was sorry that this error had happened.

The fourth and last request was for a new wash room for the yard men.

Mr. H. S. Falk realized that they were sadly in need of a wash room. He stated that preparation would be made for a temporary wash room to be set up in the pattern storage; but that it would take quite some time before a permanent place would be established because of lack of room.

The meeting was adjourned at 5:30 P. M.

Victoria E. Worke,
Assistant Secretary.

478 Minutes of a Meeting Held With the Management.
June 11, 1937.

A meeting was held with the management on Friday, June 11, 1937, at 9:00 A. M., in the main dining room of the Falk Corporation.

The topic of discussion at this meeting was Mr. H. S. Falk's decision on the vacation period. Mr. H. S. Falk announced

that he would give a two-day vacation with pay on the 2nd of July and the 6th of July. This vacation to include everyone. The board of directors would not accept this decision.

After some discussion Mr. H. S. Falk stated that he could not give a three day vacation as asked for, because the request in a way was unreasonable inasfar as those who already were receiving vacations with pay; but was willing to give two days with pay including those who were getting vacations.

Mr. Fred Wilson asked Mr. H. S. Falk to compromise in some way in order to give the shop the three days asked for. He felt he could not go out in the shop and tell the men that only two days were given. More discussion followed. Mr. Ewart then stated that in order to give the shop the three days asked for, to omit the office force from this request for there had been rumors to the effect that it would make no difference with the office whether they got a vacation for that period. Mr. H. S. Falk would not accept this suggestion because he felt that a request made by the Union should involve everyone.

Mr. A. W. Prodehl suggested that Mr. H. S. Falk give the shop three days vacation with pay for 24 hours, and the office to have one day on the 6th of July. This suggestion was favorable to Mr. H. S. Falk. Mr. A. W. Prodehl asked for a ten minutes recess to go to the drafting department and see if that arrangement would be satisfactory to the men there. Mr. Prodehl stated that this arrangement was agreeable to the majority of the engineers.

The request granted was:

The employer will grant three days (July 1, 2, and 6) vacation with pay (for this year only) to all hourly employees. All others now receiving vacations will be granted one day July 6, 1937. Vacation to be paid on the standard rate for a three eight hour basis.

A request was made for more parking spaces and oiling of the roads around the plant to keep the dust down. Mr. Falk then promised that on some warm day he would top-surface the road, and leave the parking problem up to the men in the engineering department.

Mr. Wilson, on behalf of the directors, thanked Mr. H. S. Falk for granting the vacation period.

The meeting was adjourned at 10:00 A. M.

Victoria E. Worke,
Assistant Secretary.

479 Secretarial Report for May and June 1937.

June 18, 1937.

Your Board of Directors have acted upon 858 applications to date, and of these 858 applications, 37 were found to be ineligible, leaving a total of 821.

Of these 821 applications 692 have paid for May, and 601 for June, making a total of 1293 paid members for the two months; or $646.50 received in dues plus $14.85 cash received in a special collection at the 2nd meeting at the North Avenue Auditorium, making a total of $661.35 received to date.

Signed Bernard Moebus,

Sec.

v/w

480 Financial Report for May to June 18, 1937 Inclusive

Received from secretary		$661.35
Disbursements:		
Organ. Expense—Charter, seal, etc.	$22.80	
Printing for applications and notices	8.50	
Printing meeting notices	4.75	
Rent for N. A. Auditorium	40.00	
Printing for receipts	9.50	
Printing monthly meeting cards	8.00	
Special Delivery—Fred Douglas	.13	
Secretarial Salaries	30.00	

(The following payments are to reimburse the following men for time taken off work during organizing.)

John Mitschka	$ 5.33
Wm. Kirch	7.36
John Wolf	6.37
Frank Ruscitti	2.48
Robert Gillette	2.28
Leslie Greget	8.15
Dan Martin	4.81
Herman Schneider	2.66
J. Sattler	1.25
Joe Trost	9.72
Stanley Adamski	8.33
Fred Wilson	7.60
Carl Menz	4.45
Frank Kokalj	3.00
Matt. Bernklau	2.87
M. Gagliano	1.50

Elmer Kothrade	2.67	
Rent of Bohemian Hall—3 mos.	15.00	
Printing membership cards, notices, and stamps	25.50	
Frank Ruscitti—time spent off work at directors meeting	3.36	
Secretarial salaries	40.00	
Stamp Pad	3.15	
Printing Monthly notices	11.50	
Total Disbursements		303.02
Balance in Bank		358.33

Signed Stanley J. Adamski,
Treas.

Auditing Committee
A. W. Prodoehl
Fred C. Wilson

481 Minutes of the Independent Union of Falk Employees held
June 26 1937.

The fourth monthly meeting of the Independent Union of Falk Employees was held on June 26, 1937 at 3:00 P. M. at the Bohemian Hall.

Mr. Wilson presiding as president
Mr. Moebus as secretary
Miss Worke as assistant secretary

Seven out of the thirteen directors were present.

The minutes of the last monthly meeting were read and approved as read.

The minutes of the Board of Directors meeting were read and stood as read.

The minutes of the Board of Directors held with the management on June 7, were read and approved. The minutes of the Board of Directors held with the management on June 11, 1937 were read and approved.

The secretary have his report and stated that up to the present time the Union has 859 members.

The report of the Treasurer was given and stood as read.

Unfinished business regarding the buttons. The directors had corresponded with three firms concerning these buttons and out of the three, two were answered. The directors asked

that they be given more time in which to correspond with other firms doing business in this line. The request was granted.

New business.

Question was brought up regarding men working on the Saturday the Union meeting was held. It was stated that something be done about this or the meetings will have to be held on a day when all members can attend. Mr. Wilson stated that he had talked to the management regarding this situation and was told that the reason for working on that Saturday was because of the six day vacation and the work had to be done.

It was resolved that the meeting be adjourned. The meeting was adjourned at 3:20 P. M.

Victoria E. Worke,
Assistant Secretary.

482 Meeting of the Board of Directors.

June 6, 1937.

Mr. Wilson presiding as president
Mr. Moebus secretary
Miss Worke assistant Secretary
No old business was brought up.

As there were very few members at the Union Meeting there was little or no discussion to be had at the meeting of the Board Directors.

Directors were urged to continue their search for other firms handling buttons.

It was resolved that the secretaries be paid for their months work. Mr. Moebus received $20.00, and Miss Worke received $20.00.

It was resolved that the meeting be adjourned. The meeting was adjourned at 3:50 P. M.

Victoria Worke,
Assistant Secretary.

483 Copy of Minutes of Meetings
of
Independent Union of Falk Employees.
Alexander, Burke & Clark
Attorneys at Law
901-906 Title Guaranty Building
Milwaukee

484 INDEPENDENT UNION EXHIBIT NO. 3.

Application

(Union Label—37)

I hereby apply for membership in the "Independent Union of Falk Employees," this will not include executives, assistant executives, officers, assistant officers, superintendents, assistant superintendents, foremen or assistant foremen of Falk Corp. of Milwaukee.

The purpose of said organization shall be to aid its members in the regulation of wages, hours, conditions of employment, including the right to act as the representative of its members in entering into contracts with their employer for the purpose of collective bargaining.

If I am accepted as a member, I agree to be bound by the Articles of Organization and By-Laws.

I further agree to submit to the Board of Directors of said organization, any dispute between myself and my employer, pertaining to wages, hours, working conditions, or other mutual aid or protection and to abide by the decision of said Board.

I expressly nominate and appoint the Board of Directors of said organization as my representative for the purpose of collective bargaining.

If I am accepted as a member in said organization, I agree not to withdraw without giving at least ten (10) days' written notice.

In the event I am accepted as a member and withdraw, I agree to forfeit my rights as a member unless otherwise ordered by the Board.

Clock No.	Name	Address	Date
.....	.....	.....	.....

Dated Nov. 2, 1937.

2357 UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD,

Twelfth Region.

In the Matter of The Falk Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528.	Case No. XII-C-57.

INTERMEDIATE REPORT.

Upon charges duly made, and acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, approved July 5, 1935, Nathaniel S. Clark, agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations—Series I, as amended, Article IV, Section 1, issued its complaint therein dated August 4, 1937, against The Falk Corporation, respondent herein. The complaint and notice of hearing therein were duly served upon respondent on August 4, 1937, and upon the Independent Union of Falk Employees on August 6, 1937, in accordance with said Rules and Regulations—Series 1, Article V, Section 1. The complaint was amended by motion at the hearing.

The complaint alleged in substance as follows:

The respondent, The Falk Corporation, is a Wisconsin corporation with an office and plant located in Milwaukee, Wisconsin, where it is engaged in the design, manufacture, sale and distribution of varied machine products, maintaining sales agencies and district offices in 38 cities of the United States and foreign countries. The respondent causes a
2358 substantial part of the raw materials purchased and products manufactured to be transported in interstate commerce.

All the employees of the respondent at the Milwaukee plant, except supervisory employees, draftsmen, employees in the general office and employees of the payroll department, constitute a unit appropriate for the purpose of collective bargaining. The Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, is a labor organ-

ization which represents a majority of the employees in said unit but that at all times the respondent refused to bargain and these acts of the respondent constitute an unfair labor practice within the meaning of Section 8, subdivision (5) of the Act. That respondent discharged Anton Kinch for the reason that he engaged in concerted activities with other employees and that by reason of the said discharge is discriminating in regard to the hire and tenure of employment and thereby is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

That respondent has dominated and interfered with the formation and administration of a labor organization at the Milwaukee plant known as the Independent Union of Falk Employees, thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (2) of the Act. By all of said acts, the respondent did interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act, and is engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of the Act.

The aforesaid acts of respondent constitute unfair labor practices affecting commerce within the meaning of Sec-
2359 tion 8, subdivisions (1), (2), (3), and (5), and Section 2, subdivisions (6) and (7) of the Act.

The respondent, the Falk Corporation, in its answer alleged in substance as follows:

Denied the allegations of the complaint, except as to corporate existence and interstate business of the corporation. That the discharge of Anton Kinch was for legal cause.

The International Union of Operating Engineers, Local 311, (A. F. L.) set forth in a petition to intervene substantially as follows:

That Local 311 is a labor organization that has been selected by a majority of the power house employees to represent them as a bargaining agent with the respondent and that the said power house employees constitute an appropriate unit for the purpose of collective bargaining. That the respondent has violated Section 8, subdivisions (1), (2), (3), and (5) of the National Labor Relations Act in its relations with the power house employees.

The Independent Union of Falk Employees set forth in a petition to intervene substantially as follows:

That it is an organization of employees of The Falk Corporation and has in its membership over fifty per cent of the

employees, exclusive of supervising employees. That said membership constitutes an appropriate unit for the purpose of collective bargaining.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner of the National Labor Relations Board, designated by the said Rules and Regulations—Series 1, as amended, Article IV, Section 2, and Article II, Section 23, conducted a hearing August 16 to 21, and August 23 to 25, 1937, at
2360 Milwaukee, Wisconsin. The respondent appeared by Lamfrom, Tighe, Engelhart and Peck; the International Union of Operating Engineers, Local 311, appeared by A. S. Goldberg, and the Independent Union of Falk Employees was represented by Giles F. Clark. All participated in the hearing.

At the opening of the hearing the petitions of the International Union of Operating Engineers, Local 311, and the Independent Union of Falk Employees to intervene were granted. Local 311 was required to prepare an amended petition setting forth more specifically the charges against the respondent and respondent filed an amended answer thereto. Counsel for the Board at the close of the hearing moved to amend the complaint to conform to the proof. The motion was granted. Counsel for the respondent then made several motions to dismiss the complaint. The motions were denied. At the close of the hearing counsel for respondent moved that the amended petition of the International Union of Operating Engineers, Local 311, be dismissed. The motion was denied.

Full opportunity to be heard, to examine, and cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties. Counsel for the parties at the close of the hearing did not avail themselves of the opportunity for oral argument, and no request was made to file briefs. The undersigned advised counsel that if oral argument before the Board was contemplated such request must be made in writing direct to the Board within five days after the close of the hearing.

Upon the record thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered at the hearing, the undersigned makes, in addition to the above, the following specific findings of fact.

361 FINDINGS OF FACT.

Section I. Respondent.

1. The respondent, The Falk Corporation, was organized nd incorporated on June 3, 1895, as The Falk Manufacturing Company, and on February 18, 1899, the name was changed o The Falk Company. The Falk Company was dissolved in May, 1921, and The Falk Corporation was organized as a Visconsin corporation with an office and plant located in Milwaukee, Wisconsin. The corporation is engaged in the design, manufacture, assembly, sale and distribution of steel astings, gears, couplings and other varied machine products, which are sold and distributed through sales agencies, district offices and sales representatives in 62 cities of the United States and Canada, Mexico, Philippine Island, Hawaii, Cuba, nd South Africa. The respondent employes a total of approximately 1500 people, of whom approximately 1300 are n the maintenance and production departments.

Section II. Unfair Labor Practices.

A. Employee's Association.

2. The history of labor organizations in the respondent's lant dates from about 1906, when the International Moulders Union of North America called a general strike in Milwaukee, Visconsin. This strike reduced production in the plant for a ime and without recognition of the union production was radually increased as the Moulder's union strength was demoralized by employment of non-union workmen. From 1906 o 1933 there were no labor disputes or disturbances in the lant although several efforts were made by the A. F. L. nions to organize. In 1933, as a result of the enactment of ection 7(a) (N. I. R. A.), Harold Falk, the works manager,
called a meeting of the employees to organize some type
362 of representation plan and advised against an outside
labor organization, referring particularly to the organ-
er of the Metal Trades Division of the Milwaukee Federated rades Council. Falk further advised the employees that the orporation would not consider a closed shop.

3. Following the advice of Mr. Falk, the Works Council as organized. It was composed of representatives of the mployees in the plant who had been continuously employed y the Company for a period of one year preceding their

nomination and appointed representatives of the management. The Chairman and Secretary of the Works Council were appointed by the management. This plan was clearly in violation of the Wagner Act, as evidenced by the fact that after the Supreme Court upheld the Wagner Act on April 12, 1937, the Works Council was discontinued. It should be noted that the respondent made no effort to comply with the Wagner Act from the date of its passage on July 5, 1935, until April 12, 1937. The testimony of N. S. Falk discloses that the corporation and its agents have consistently opposed every labor organization because of the fear of a closed shop as shown by their absolute refusal to deal with any "outsider", that is, a representative other than one of its own employees. Falk further testified that the Works Council during its existence did not accomplish anything for the employees that the corporation would not have done without the Council.

4. Certainly, the history of labor relations in the plant of the Falk Corporation up to April, 1937, was not conducive to self-organization amongst its employees and it was well understod by the employees that unions especially with "outside" affiliation were "outlawed" in the plant. It is not
2363 at all surprising then that when the Works Council held its last meeting on April 8, 1937, almost instantly the organization of the Independent Union of Falk Employees was started by certain employee representatives of the Works Council with the knowledge and consent of Harry Green, superintendent of the machine shop and former chairman of the Works Council. The personnel manager, Mr. Hydar, of the corporation, who was secretary of the Works Council assisted in notifying the past and present employee representatives of the Works Council to meet in the plant hospital on April 12, 1937. His denial of knowing the purpose of the meeting can be given no weight as the purpose of the meeting was generally known. Hydar's inability to remember who requested him to call the representatives, his insistence that the person was an employee, his decided lack of memory in matters of importance, makes it appear that he either was not telling the truth or has a very selective memory for facts.

5. The Independent Union of Falk Employees started organizing on April 12, 1937, and on April 23, 1937, received written notification from the Corporation that "after conference with your committee, and upon your statement that your organization represents the majority of our employees, and

that you request that we enter into negotiations with you as the collective bargaining agency for all of our employees, we advise you that we will so recognize your organization."

6. An examination of the relation of the Corporation to the Independent Union during this period conclusively shows the cooperative arrangement existing.

7. During April 12, 13, and 14, 1937, a committee of approximately 23 past and present Works Council members met in the hospital connected with the plant for sev-
2364 eral hours each day and discussed the formation of the Independent Union. The workmen attending these meetings were paid for the time in attendance. Later, all had deductions made from their pay checks by the Corporation, after the matter had been called to its attention by the National Labor Relations Board.

8. At least two of the company representatives were called into these meetings to explain the Wagner Act and there was some discussion with Harold Falk, works manager, concerning an increase in wages which had been under advisement by the Works Council. Mr. Falk testified that the increase had been tentatively set for June 1 and when it was suggested by one of the committee that it would be a good idea to advance the date to May 1, he agreed with the suggestion. There is testimony to indicate that some mention was made of the C. I. O. in this connection and that if the increase was made effective May 1, it might be the means of avoiding some difficulty. While the evidence is very conflicting at this point, the undersigned, considering all the testimony and the surrounding circumstances, believes that the change in effective date from June 1 to May 1 was made to discourage the Amalgamated activities in the plant. The promise of change in effective date was made to a committee which was just starting an independent union in a plant where the C. I. O. had been actively engaged in organization work and thus placed the Independent Union in a very advantageous position in securing members.

9. The attorney employed by the Independent Union was suggested by Harold Falk and the appointment for the committee to see the attorney was made by Harold Falk. It is true that the general committee appointed three of its members to call upon Mr. Falk for this purpose, but it is an
2365 established fact that Falk suggested Mr. Burke as attorney, knowing that he had acted for other independent unions. Leslie Greget, one of the members of this committee,

testified he did not know the attorney suggested by Falk and then later in his testimony made it appear that he had heard of the attorney. Greget at a meeting of Falk employees on April 18, when asked where the committee had secured their attorney, stated that he had known the attorney for some time and failed to state that Falk had suggested the attorney. Greget's failure to advise the meeting that Falk had suggested the attorney resulted in a very heated argument at the meeting and may have been one of the contributing factors in abandoning the formal organization of an independent union at this meeting.

10. The committee employed the attorney to handle their affairs with the understanding that if the union organization was completed he would be paid; if not, there would be no charge. During the organizing of the Independent Union several members of the committee spent much time in conference with the attorney. No deductions were made in their pay checks for the time so spent until some while later, after the failure to make such deductions had been called to the attention of the respondent by an agent of the National Labor Relations Board.

11. A general meeting was held on April 18 which was attended by several hundred employees. The meeting adjourned without taking any organizational action and the general feeling was that the organization should run along as an association. Mr. Burke of the law firm of Burke & Clark attended this meeting and explained the method of organizing, the Article of Association, and the advisability of incorporation. The next day, April 19, three employees of The Falk Corporation, Fred Wilson, Joe H. Trost and Carl Menz, who had attended the meeting of April 18, and without authority from the meeting or the original organization committee, went to the office of Burke & Clark and signed the Articles of Association which were taken at once to the State Capitol at Madison, Wisconsin, and filed, and on April 20, filed in the Register of Deeds Office at Milwaukee. On the same day the Independent Union notified The Falk Corporation that the members of this corporation (Independent Union) would be limited to employees of the company; that the corporation is to represent its members for collective bargaining; that the corporation has approximately 400 members signed to applications; that the corporation has reason to believe it will have a majority soon; and that the respondent should name the place and state the time to meet for the purpose of collective bargaining.

12. The three signers of the Articles of Association representing the corporation (Independent Union), without authority of the organizing committee of employees who had secured several hundred application cards, met with Falk and without submitting any evidence to the respondent to show they represented a majority of the employees, secured recognition for the Independent Union, not for the members of the Independent Union as requested in its letter of April 20, but as representative of all the employees of the respondent. The evidence discloses that negotiations were started but discontinued pending the outcome of this hearing.

13. On April 24, the day after the Incorporating Committee had been recognized as exclusive bargaining representatives, a meeting was held at which the organization was completed by the election of 13 directors representing the 2367 different departments of the plant. The carelessness with which directors were elected is very well disclosed by the fact that a sub-foreman was elected by his marking the ballots of the workmen in his department, many of whom could not read or write. This sub-foreman later resigned and the Board of Directors elected an employee in his place. The election of 13 directors by the employees of the 13 different departments of the plant, at a general meeting of all employees, further discloses the utter disregard of the first principle of self-organization, freedom of choice in the selection of representatives.

14. The meeting adopted by-laws which had been prepared on the basis of the Articles of Incorporation drawn by an attorney selected by the respondent's agent, the contents of which the members did not and could not pass upon. The Articles of Incorporation provide that the Independent Union of Falk Employees, as a corporation, shall have a president, vice-president, secretary and treasurer, who shall be elected by the 13 directors; that the Board of Directors shall act as a supreme governing body of the corporation and have the sole right to act as the representative of the members of the corporation in all negotiations with The Falk Corporation. Furthermore, the corporation shall be composed of employees of the respondent entitled to all rights, privileges, and benefits during the time the member is employed by the respondent.

15. Under this form of organization the members could be saddled with a contract running for years, none of which terms the members were in accord with, and any director who was independent could be discharged and not being

an employee of The Falk Corporation could not hold office. It is not unlikely that this would occur as shown by the discharge of Anton Kinch, referred to in Section II, (D) of this report, who was a member of the Works Council, 2368½ and not acceptable to the agents of The Falk Corporation.

16. The respondent by its officers and agents April 12, 13 and 14, 1937, formed and sponsored the Independent Union of Falk Employees as a labor organization of its employees.

17. The Independent Union of Falk Employees is a labor organization within the meaning of the National Labor Relations Act.

18. The respondent is dominating and interfering with the administration of a labor organization of its employees by the activities hereinbefore set forth and is aiding and supporting said labor organization.

B. Unions.

19. The Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, is a local lodge of the Amalgamated Associated affiliated with the Committee for Industrial Organization and is a labor organization within the meaning of the National Labor Relations Act.

20. The International Union of Operating Engineers, Local 311, is a local chartered by the International Union affiliated with the American Federation of Labor and is a labor organization within the meaning of the National Labor Relations Act.

C. Collective Bargaining.

1. The Unit.

21. The testimony discloses that the International Union of Operating Engineers, Local 311, includes in its membership workmen engaged in the operation of steam driven equipment. Further, that of the 17 workmen eligible for membership employed by the respondent, 14 had indicated a desire to have Local 311 represent them as their bargaining agent. The Amalgamated Association and Local 311 started organ-
2368½ izing in the plant at about the same time and there is no evidence to show that the Amalgamated Association ever represented any of the engineers or attempted to bargain for them. The power house where all the engineers, except one, are employed is in a separate building, and oper-

ated as an independent unit with an engineer in charge. The desire of the engineers to be represented by Local 311 and the fact that the Amalgamated Association had no members in this group would indicate that the employees in the power house, including the two operators of steam-driven hoists make up an appropriate unit for the purpose of collective bargaining.

22. The employees of the power house, including the two operators of steam-driven hoists employed by the respondent, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act.

23. The "Works Council" which had operated for many years in the Falk plant included the so-called production or plant employees, and only after the Independent Union was organized was any consideration given to including as members draftsmen and clerical employees. This undoubtedly was because the Amalgamated Association had secured a very large membership in the plant while it was known that the draftsmen and clerical employees would practically all join the Independent Union. The Amalgamated Association includes in its membership employees who are in the production department. The problem and interest of the plant workers and the basis of pay is different than that of the draftsmen and clerical employee. These differences are of such a nature that one could not bargain effectively for the other. For the reasons stated herein the employees connected with the
2369 production department, except operators of steam-driven equipment, should be considered a separate unit from the so-called office employees which includes draftsmen, employees in the general office, and employees in the payroll department.

24. All the employees of the respondent, The Falk Corporation, except the supervisory employees, draftsmen, general office employees, payroll department employees and the engineers (power house and steam-driven hoist operators) constitute another appropriate unit for the purpose of collective bargaining, as evidenced by the membership qualifications of the Amalgamated Association and the practice for years past of the Works Council including only plant employees.

2. International Operating Engineers.

25. Sometime in February, 1937, Phil J. Kingsland, the business representative of Local 311, started to organize the engineers in The Falk Corporation and by the first part of April had secured the signatures of 14 of 17 engineers employed by the respondent. Mr. Kingsland then called upon Harold Falk to secure recognition for Local 311 and Mr. Falk advised he could see no reason why recognition should not be given but that he wanted to talk to the men and determine if they wanted to have Local 311 represent them as their bargaining agent. Subsequent to this a misunderstanding arose between Falk and Local 311 as to the wording on a postal card, sent out by Local 311, calling for a meeting of the engineers. As a result of this misunderstanding, Falk again talked to some of the engineers and placed in the hands of each engineer a letter which stated "We do not favor a union." The letter also made reference to the meeting of Falk with Kingsland and to rights of employees to join or not join a union. Such direct statement of the respondent's
2370 position with respect to unions could have only one effect on employees whose jobs are subject to the respondent's control, that is, to discourage membership in unions. Practically every one of the 14 engineers withdrew their applications from Local 311, and Burke & Clark, attorneys for the Independent Union prepared the letters of withdrawal for five of the engineers.

26. The records of Local 311 as to membership of the engineers were very unsatisfactory, consisting mainly of application cards which were incomplete in that there was no reference to the appointment of Local 311 as the representative for purposes of collective bargaining and were applications under which no rights were established until the applicants were accepted by Local 311. Further, there was no evidence of actual membership or the payment of dues. The proof was of such an indefinite nature that the undersigned can make no finding as to the designation of Local 311 by a majority of the engineers to represent them for the purposes of collective bargaining and consequently there was no refusal on that part of the respondent to bargain with Local 311.

27. The Amalgamated Association had been active prior to the formation of the Independent Union and had secured the signatures of several hundred employees to application cards. There is little doubt that both organizations conducted an in-

tensive campaign for members often times during working hours. The Amalgamated Association was at a very decided disadvantage with the attitude of Harold Falk against "outside" unions being well-known among the employees, and the foremen in several instances openly opposing the Amalgamated Association and the C. I. O. In spite of these disadvantages the Amalgamated, during April, completed its organization, elected officers, and on May 5, met with repre-
2371 sentatives of the respondent to seek recognition which was denied on the grounds that the respondent had recognized the Independent Union as the sole and exclusive bargaining representatives of its employees.

28. The evidence is not conclusive that the Amalgamated Association had been designated as the representative for collective bargaining of all the employees, except the supervisory employees, draftsmen, general office employees, payroll department employees, and the engineers (power house and steam-driven hoists). The Amalgamated Association did not produce at the hearing any records to prove that it had been designated by a majority of the employees in the unit referred to herein. The statement was made by the financial secretary that the Amalgamated Association had approximately 700 members in the plant department, of approximately 1300 workers. He further stated "I have been told by numerous fellow-workers and also by some of the rival organizations that if it was possible, if it was definite, they would indicate that they wanted the Amalgamated Association to represent them as their bargaining agent." It should be noted that a very intensive drive for membership had been conducted by the Independent Union of Falk Employees, who had according to their records, been designated by 869 employees on July 26, in all departments, including office, clerical, and draftsmen who had designated the Independent Union as their bargaining agent. There is some testimony to show that many of the employees joined both the Amalgamated Association and the Independent Union.

29. The lack of definite proof of the Amalgamated membership and the fact that many employees joined both makes it impossible to determine that it had been designated by a majority of all the employees, except supervisory employees, draftsmen, general office employees, payroll department employees and power house employees (engineers and steam-driven hoist operators), and so the respondent did not
2372 refuse to bargain with a labor organization representing a majority of its employees in the appropriate unit.

D. Discharge

30. Anton Kinch had worked in the machine shop of The Falk Corporation for approximately seven years when he was discharged on December 31, 1936. According to the testimony of Harry Green, superintendent of the machine shop, Kinch started in the shop without any training or experience and acquired a fairly satisfactory knowledge of the work. At the time Kinch was discharged he was employed as an assembler. Green further testified that Kinch's work at all times was satisfactory.

31. During the latter part of 1936, Kinch was a representative on the Works Council, having been duly elected by the employees of his department. At the time of Kinch's election he at first declined to serve but at the solicitation of the respondent's representatives on the Works Council he finally consented to serve after stating that it should be understood that he, Kinch, was to be free to follow the dictates of his own mind on matters coming within the scope of the Works Council. This apparently was satisfactory to the respondent as Kinch then proceeded to take an active part in the affairs of the Works Council. Kinch not only incurred the displeasure of the respondent's representatives on the Works Council because of activities and interest in behalf of the employees, but also of some of the employee representatives. He always insisted on something of real value to the employees being discussed and considered at the meetings.

32. In the Fall of 1936, Kinch, as a representative of his department on the Works Council, started to discuss 2373 with the employees a plan for reclassification of duties and wage adjustments. This came to the attention of Harold Falk, who requested Kinch to discuss the plan in a conference which was held at Falk's office. It was agreed that Kinch later would submit the entire plan in writing to Falk. Kinch then prepared six petitions for the signatures of employees who approved of the plan and retaining one of these petitions placed the other five in the hands of other employees to secure signatures. The testimony discloses that the names of a substantial number of employees were secured partly during working hours. Kinch also made an investigation of the earnings of the respondent, salaries paid the executives, wages paid in other plants of a similar kind and used the information obtained to support his plan. The written plan was submitted to the Works Council who referred the matter to Harold Falk who prepared a written

reply to the Works Council opposing the plan. The Works Council disapproved the plan. The discharge of Kinch is directly the result of the activities referred to herein.

33. The Works Council governing regulations as adopted and approved by Harold Falk provide in Article XIII, Section "Guaranty of Independent Action": "Every employee representative serving on the Works Council shall be wholly free in the performance of his duties as such and shall not be discriminated against on account of any action taken by him in good faith in his representative capacity." Harry Green, the superintendent of the machine shop and chairman of the Works Council, interpreted this clause to mean activities of employee representatives outside of working hours. This interpretation in the light of time spent by representatives of the Works Council on business for the Council and the formation of the Independent Union is entitled to no consid-
2374 eration. Further, there was no showing that Kinch's advocacy of the plan or securing of signatures to the petitions resulted in any definite loss of time, or loss of production in the plant. Article XVI "Compensation to Representatives" contemplated compensation to employee representatives for time spent on Works Council business during working hours: "Employee representatives shall be compensated at their respective hourly rates for time spent at meetings of the Works Council and the Fact Finding Committee, and in performing during working hours such other duties as they may be called upon to perform under this plan." Mr. Green stated that this meant only such duties as are assigned to the employee representatives.

34. Harold Falk, works manager, stated that Kinch was discharged for, "Well, the circulating of the petition and his continued activity, poisoning the men." Falk also stated, "First of all, the original arrangement that I had with Kinch that he would put it in writing and see me and he started circulating petitions around the plant on company time against rules." However, Mr. Falk admitted, "there were no such written or posted rules, but we did not hire Kinch for that purpose." Falk advised Kinch was a fair worker and there was nothing against his record until the petitions were circulated. Falk testified that Kinch could not be reemployed because "I think Kinch is a very decided distributor." A consideration of the facts herein convinces the undersigned that Kinch was discharged because of being engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

35. Said Anton Kinch was discharged by Harold Falk, an agent of the respondent, on December 31, 1936, and since that time, refused employment by respondent for the reason that said Anton Kinch engaged in concerted activities,
2375 for the purpose of collective bargaining and other mutual aid and protection.

36. By said discharge and refusal to employ said Anton Kinch, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

37. By said discharge and refusal to employ said Anton Kinch, respondent has discouraged membership in the labor organizations known as Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528, the International Union of Operating Engineers, Local 311, and concerted activities amongst its employees.

III. Interstate Commerce

38. The Falk Corporation is a Wisconsin corporation with its general office and plant located in Milwaukee, and in the operation of its business maintains and operates sales agencies, district offices and sales representatives in 50 cities of the United States, six cities in the various provinces of Canada, two cities in the Republic of Mexico and in the Philippine Islands, Hawaii, Cuba and South Africa.

39. In the production of steel castings, helical gears, speed reducers, speed increasers, and various other machine products, the respondent uses large quantities of pig iron and scrap steel, the principal source of which is Pennsylvania and New York. Coal from Pennsylvania, silica sand and fire clay from Illinois, and a great variety of machine products from several states other than Wisconsin, are also used by the respondent. Of these materials approximately 65 per cent originates outside the State of Wisconsin, passing over many state boundries in reaching the Milwaukee plant
2376 of The Falk Corporation. These materials purchased by the Corporation are received by rail and truck principally.

40. The manufacture of these materials into Falk products from the time it reaches the plant is one continuous movement.

41. Of the manufactured Falk products, 75 per cent represent sales to points outside the State of Wisconsin. These products are sold, distributed, and transported to pur-

chasers, dealers and others, being ultimately consumed nationally and internationally. The products so sold, distributed, transported and consumed are carried by mail, motor trucks and railroads to various sections of the country outside the State of Wisconsin and to foreign countries.

42. The principal users of Falk products by industries are: automotive, breweries and distilleries, cement mills, chemical plants, foundries, marine, mines, oil fields and oil refineries, paper and pulp mills, railroads, sand and gravel plants, rolling mills, and rubber mills.

43. The Falk Corporation's net billings in 1936 were $5,308,761.37, of which amount the steel foundry accounted for $1,463,247.46 and the machine shop accounted for $3,843,513.91.

44. The activities of the respondent set forth in Section II above, occurring in connection with operations of the respondent described in this section, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions and Recommendations.

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. Respondent, The Falk Corporation, by discharging and refusing to employ Anton Kinch and thus discouraging concerted activities amongst its employees; and by dominating and interfering with the labor organization known as 2377 the Independent Union of Falk Employees; and by sponsoring and contributing support to it; and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. Respondent, The Falk Corporation, by dominating and interfering with the administration of the Independent Union of Falk Employees and with the formation of this labor organization and by contributing support to this labor organization, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (2) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

3. Respondent, The Falk Corporation, by discriminating in regard to the hire and tenure of employment of Anton Kinch and thereby discouraging concerted activities amongst its employees, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. The respondent, The Falk Corporation, cease and desist from interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form, join or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other aid or protection;

2378 2. Respondent, The Falk Corporation, cease and desist from discouraging concerted activities amongst its employees or any labor organization, by discriminating in regard to hire or tenure of employment or any term or condition of employment;

3. Respondent, The Falk Corporation, cease and desist from dominating or interfering with the formation or administration of a labor organization known as the Independent Union of Falk Employees or any labor organization, and from contributing support to the Independent Union of Falk Employees or any labor organization;

4. In order to effectuate the policies of the Act, take the following affirmative action:

(a) Respondent, The Falk Corporation, offer to Anton Kinch employment in the position formerly held by him with all the rights and privileges previously enjoyed by him;

(b) Respondent, The Falk Corporation, make whole to Anton Kinch for any loss of pay he has suffered by reason of his discharge by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of offer of employment, less the amount earned by him during such period;

(c) Respondent, The Falk Corporation, withdraw all recognition from the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work and disestablish all relations with such organization;

(d) Post notices in conspicuous places throughout all departments of the respondent's plant stating, (1) that respondent will cease and desist in the manner aforesaid; and (2) that the respondent's employees are free to join
2379 or assist the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528, and the International Union of Operating Engineers, Local 311, or any other labor organization of its employees and that their status as employees of the respondent will not be affected by such action on their part; and (3) that the respondent is disestablishing all relations with the Independent Union of Falk Employees and withdrawing all recognition from it as a representative of the respondent's employees; and (4) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting; and

(e) File with the Regional Director for the Twelfth Region within ten (10) days from the service of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing requirements.

It is further recommended that unless within ten (10) days from the service of this Intermediate Report, the respondent notify said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring the respondent to take the action aforesaid.

/s/ James C. Batten,
Trial Examiner.

Dated November 2, 1937.

2380 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XII-C-57) * *

EXCEPTIONS OF THE FALK CORPORATION TO THE INTERMEDIATE REPORT OF JAMES C. BATTEN, TRIAL EXAMINER, DATED NOVEMBER 2, 1937.

And now comes The Falk Corporation, by Lamfrom, Tighe, Engelhard & Peck, its attorneys, and excepts to the Intermediate Report of James C. Batten, Trial Examiner, which report is dated November 2, 1937, as follows:

1. Excepts to the 3rd Finding of Fact, and to the whole thereof, for the reason that said Finding of Fact is not a finding material to the issues in the matter, as set forth in

the complaint, and in the answer of the respondent, and for the reason that said Findings of Fact, and the whole thereof, is entirely immaterial to the issues in this matter.

And further, excepts to that portion of the 3rd Finding of Fact which reads as follows:

"* * that the corporation and its agents have consistently opposed every labor organization because of the fear of a closed shop as shown by their absolute refusal to deal with any 'outsider', that is, a representative other than one of its own employees."

for the reason that such portion of said Finding of Fact 2381 is not supported by substantial evidence.

And further, excepts to that portion of the 3rd Finding of Fact, which reads as follows:

"Falk further testified that the Works Council during its existence did not accomplish anything for the employees that the corporation would not have done without the Council."

for the reason that said portion of said Finding of Fact is not supported by substantial evidence.

2. Excepts to that portion of the 4th Finding of Fact, which reads as follows:

"* * it was well understood by the employees that unions especially with 'outside' affiliation were 'outlawed' in the plant."

for the reason that said portion of said Finding of Fact is not supported by substantial evidence.

And further, excepts to that portion of the 4th Finding of Fact, which reads as follows:

"It is not at all surprising then that when the Works Council held its last meeting on April 8, 1937, almost instantly the organization of the Independent Union of Falk Employees was started by certain employee representatives of the Works Council with the knowledge and consent of Harry Green, superintendent of the machine shop and former chairman of the Works Council."

for the reason that that portion of the Finding, treating of the knowledge and consent of Harry Green is not supported by substantial evidence.

And further, excepts to that portion of the 4th Finding of Fact, which reads as follows:

"The personnel manager, Mr. Hydar, of the corporation, who was secretary of the Works Council assisted in notifying the past and present employee representatives of the Works Council to meet in the plant hospital on April 12, 1937.

His denial of knowing the purpose of the meeting can be given no weight as the purpose of the meeting was generally known. Hydar's inability to remember who requested him to call the representatives, his insistence that the per-
2382 son was an employee, his decided lack of memory in matters of importance, makes it appear that he either was not telling the truth or has a very selective memory for facts."

for the reason that said portion of said Finding of Fact is immaterial to the issues in the matter.

3. Excepts to the 6th Finding of Fact, and the whole thereof, for the reason that said Finding is not supported by substantial evidence.

4. Excepts to that portion of the 7th Finding of Fact, which reads as follows:

"The workmen attending these meetings were paid for the time in attendance. Later, all had deductions made from their pay checks by the Corporation, after the matter had been called to its attention by the National Labor Relations Board."

for the reason that said portion of the 7th Finding of Fact is not supported by substantial evidence.

5. Excepts to that portion of the 8th Finding of Fact, which reads as follows:

"At least two of the company representatives were called into these meetings to explain the Wagner Act * * *"

for the reason that said portion of said Finding is not supported by substantial evidence.

And further, excepts to that portion of the 8th Finding of Fact, which reads as follows:

"* * that the change in effective date from June 1 to May 1 was made to discourage the Amalgamated activities in the plant."

for the reason that said portion of the 8th Finding of Fact is not supported by substantial evidence.

And further, excepts to that portion of the 8th Finding of Fact, which reads as follows:

"* * and thus placed the Independent Union in a very advantageous position in securing members."
2383 for the reason that said portion of said Finding is not supported by substantial evidence.

6. Excepts to that portion of the 9th Finding of Fact, which reads as follows:

"The attorney employed by the Independent Union was

suggested by Harold Falk and the appointment for the committee to see the attorney was made by Harold Falk."
for the reason that said portion of said Finding is not supported by substantial evidence.

And further, excepts to that portion of the 9th Finding of Fact, which reads as follows:

"* * it is an established fact that Falk suggested Mr. Burke as attorney, knowing that he had acted for other independent unions."
for the reason that said portion of said Finding is not supported by substantial evidence.

And further, excepts to that portion of the 9th Finding of Fact, which reads as follows:

"Greget at a meeting of Falk employees on April 18, when asked where the committee had secured their attorney, stated that he had known the attorney for some time and failed to state that Falk had suggested the attorney. Greget's failure to advise the meeting that Falk had suggested the attorney resulted in a very heated argument at the meeting and may have been one of the contributing factors in abandoning the formal organization of an independent union at this meeting."
for the reason that said portion of said Finding is immaterial to the issues in this matter.

7. Excepts to that portion of the 10th Finding of Fact, which reads as follows:

"No deductions were made in their pay checks for the time so spent until some while later, after the failure to make such deductions had been called to the attention of the respondent by an agent of the National Labor Relations Board."
for the reason that said portion of said Finding is not supported by substantial evidence.

2384 8. Excepts to that portion of the 12th Finding of Fact, which reads as follows:

"* * and without submitting any evidence to the respondent to show they represented a majority of the employees."
for the reason that said portion of said Finding is not supported by substantial evidence.

9. Excepts to the 13th Finding of Fact, and the whole thereof, for the reason that said Finding is immaterial to the issues in this matter.

10. Excepts to that portion of the 14th Finding of Fact, which reads as follows:

"The meeting adopted by-laws which had been prepared on the basis of the Articles of Incorporation drawn by an

attorney selected by the respondent's agent, the contents of which the members did not and could not pass upon."
for the reason that said portion of said Finding is not supported by substantial evidence.

And further, excepts to that portion of the 14th Finding of Fact, which reads as follows:

"The Articles of Incorporation provide that the Independent Union of Falk Employees, as a corporation, shall have a president, vice-president, secretary and treasurer, who shall be elected by the 13 directors; that the Board of Directors shall act as a supreme governing body of the corporation and have the sole right to act as the representative of the members of the corporation in all negotiations with The Falk Corporation. Furthermore, the corporation shall be composed of employees of the respondent entitled to all rights, privileges, and benefits during the time the member is employed by the respondent."
for the reason that said portion of said Finding is immaterial to the issues in this matter.

11. Excepts to the 15th Finding of Fact, and the whole thereof, for the reason that said Finding is immaterial to the issues in this matter.

2385 And further, excepts to that portion of the 15th Finding of Fact, which reads as follows:

"It is not unlikely that this would occur as shown by the discharge of Anton Kinch, referred to in Section II (D) of this report, who was a member of the Works Council, and not acceptable to the agents of The Falk Corporation."
for the reason that said portion of said Finding, in addition to being immaterial to the issues in this matter, is not supported by substantial evidence.

12. Excepts to the 16th Finding of Fact, and the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

13. Excepts to the 18th Finding of Fact, and the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

14. Excepts to that portion of the 25th Finding of Fact, which reads as follows:

"Such a direct statement of the respondent's position with respect to unions could have only one effect on employees whose jobs are subject to the respondent's control, that is, to discourage membership in unions."
for the reason that said portion of said Finding is not supported by substantial evidence.

15. Excepts to that portion of the 27th Finding of Fact, which reads as follows:

"The Amalgamated Association was at a very decided disadvantage with the attitude of Harold Falk against 'outside' unions being well-known among the employees."

for the reason that said portion of said Finding is not supported by substantial evidence.

16. Excepts to that portion of the 32nd Finding of Fact, which reads as follows:

2386 "The discharge of Kinch is directly the result of the activities referred to herein."

for the reason that said portion of said Finding is not supported by substantial evidence, and for the further reason that it is not a finding predicated on what the substantial evidence is.

17. Excepts to that portion of the 33rd Finding of Fact, which reads as follows:

"* * there was no showing that Kinch's advocacy of the plan or securing of signatures to the petitions resulted in any definite loss of time, or loss of production in the plant."

for the reason that said portion of said Finding is not supported by substantial evidence.

18. Excepts to that portion of the 34th Finding of Fact, which reads as follows:

"* * that Kinch was discharged because of being engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection."

for the reason that said portion of said Finding is not supported by substantial evidence, and is contrary to law.

19. Excepts to the 36th Finding of Fact, and to the whole thereof, for the reason that said 36th Finding is not supported by substantial evidence, and is contrary to law.

20. Excepts to the 37th Finding of Fact, and to the whole thereof, for the reason that said 37th Finding is not supported by substantial evidence, and is contrary to law.

21. Excepts to the 1st Conclusion, and to the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

And further, specifically excepts to that portion of the 1st Conclusion, which reads as follows:

2387 "Respondent, The Falk Corporation, by discharging and refusing to employ Anton Kinch and thus discouraging concerted activities among its employees;"

for the reason that said portion of said Conclusion is not supported by substantial evidence, and is contrary to law.

And further, specifically excepts to that portion of the 1st Conclusion, which reads as follows:

"* * and by dominating and interfering with the labor organization known as the Independent Union of Falk Employees;"

for the reason that said portion of said Conclusion is not supported by substantial evidence, and is contrary to law.

And further, specifically excepts to that portion of the 1st Conclusion, which reads as follows:

"and by sponsoring and contributing support to it;"

for the reason that said portion of said Conclusion is not supported by substantial evidence, and is contrary to law.

And further, specifically excepts to that portion of the 1st Conclusion, which reads as follows:

"* * and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above Findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act."

for the reason that said portion of said Conclusion is not supported by substantial evidence, and is contrary to law.

22. Excepts to the 2nd Conclusion, and to the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

23. Excepts to the 3rd Conclusion, and to the whole thereof, for the reason that the same is not supported by substantial evidence, and is contrary to law.

2388 24. Excepts to the 1st Recommendation, for the reason that an order of the National Labor Relations Board in substance and in form in accordance with such recommendation would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

25. Excepts to the 2nd Recommendation, for the reason that an order of the National Labor Relations Board in substance and in form in accordance with such recommendation would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

26. Excepts to the 3rd Recommendation, for the reason that an order of the National Labor Relations Board in substance and in form in accordance with such recommendation, would be beyond its jurisdiction, and for the further reason

that the same is not supported by substantial evidence, and is contrary to law.

27. Excepts to subdivision (a) of the 4th Recommendation, for the reason that an order of the National Labor Relations Board incorporating such affirmative action on the part of the respondent would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law, and contrary to the Fifth Amendment to the Constitution of the United States.

28. Excepts to subdivision (b) of the 4th Recommendation, for the reason that an order of the National Labor Relations Board incorporating such affirmative action on the part of the respondent would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

2389 29. Excepts to subdivision (c) of the 4th Recommendation, for the reason that an order of the National Labor Relations Board incorporating such affirmative action on the part of the respondent would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

30. Excepts to subdivision (d) of the 4th Recommendation, for the reason that an order of the National Labor Relations Board incorporating such affirmative action on the part of the respondent would be beyond its jurisdiction, and for the further reason that the same is not supported by substantial evidence, and is contrary to law.

31. And further, excepts to subdivisions (a), (b), (c) and (d) of the 4th Recommendation, for the reason that under the facts and circumstances as established by the evidence, such an order incorporating the form and substance of said subdivisions of the 4th Recommendation, and each of them, would deprive the respondent of liberty and property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States.

32. And further, specifically excepts to that portion of subdivision (d) of said 4th Recommendation, which reads as follows:

"and (2) that the respondent's employees are free to join or assist the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528, and the International Union of Operating Engineers, Local 311, or any other labor organization of its employees and that their status as employees of the respondent will not be affected by such action on their part;"

for the reason that an order, incorporating in form and substance said Recommendation, would indicate to the re-
2390 spondent's employees a favored position of the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528, and the International Union of Operating Engineers, Local 311, on account of the form thereof; that the proper form, if such an order is made by the National Labor Relations Board, should be to the effect that the respondent's employees are free to join or assist any labor organization of its employees, and that their status as employees of the respondent will not be affected by such action on their part.

Lamfrom, Tighe, Engelhard & Peck,
Attorneys for Respondent.

Dated: November 27, 1937.

2392 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XII-C-57) * *

EXCEPTIONS OF THE INDEPENDENT UNION OF FALK EMPLOYEES TO THE INTERMEDIATE REPORT OF JAMES C. BATTEN, TRIAL EXAMINER, DATED, NOVEMBER 2, 1937.

Now comes the Independent Union of Falk Employees, by Alexander, Burke & Clark, its attorneys, and excepts to the following Findings, Conclusions and Recommendations, found in the Intermediate Report of James C. Batten, Trial Examiner, dated November 2, 1937:

1. Excepts to that portion of Finding 5 of Section II, which reads as follows:

"The Independent Union of Falk Employees started organizing on April 12, 1937,"

for the reason that such Finding is contrary to the evidence.

2. Excepts to Finding 9 of Section II, for the reason that there is no evidence to support said Finding.

3. Excepts to that portion of Finding 9 of Section II, which reads as follows:

"The attorney employed by the Independent Union was suggested by Harold Falk and the appointment for the committee to see the attorney was made by Harold Falk."

for the reason that said Finding is contrary to the evi-
2393 dence.

4. Excepts to that portion of Finding 9 of Section II, which reads as follows:

"* * * it is an established fact that Falk suggested Mr. Burke as attorney, knowing that he had acted for other independent unions."
for the reason that said Finding is contrary to the evidence.

5. Further excepts to that portion of Finding 9 of Section II, which reads as follows:

"* * * Greget at a meeting of Falk employees on April 18, when asked where the committee had secured their attorney, stated that he had known the attorney for some time and failed to state that Falk had suggested the attorney. Greget's failure to advise the meeting that Falk had suggested the attorney resulted in a very heated argument at the meeting and may have been one of the contributing factors in abandoning the formal organization of an independent union at this meeting."
for the reason that said portion of said Finding is contrary to the evidence.

6. Excepts to that portion of Finding 11 of Section II, which reads as follows:

"* * * The meeting adjourned without taking any organizational action and the general feeling was that the organization should run along as an association."
for the reason that there is no evidence to substantiate such Finding.

7. Excepts to that portion of Finding 12 of Section II, which reads as follows:

"* * * met with Falk and without submitting any evidence to the respondent to show they represented a majority of the employees, secured recognition for the Independent Union,"
for the reason that there is no evidence to substantiate such a Finding.

8. Excepts to that portion of Finding 13 of Section II, which reads as follows:

2394 "* * * The carelessness with which directors were elected is very well disclosed by the fact that a subforeman was elected by his marking the ballots of the workmen in his department, many of whom could not read or write."
and to that portion of Finding 13 of Section II, which reads as follows:

"* * * The election of 13 directors by the employees of the 13 different departments of the plant, at a general meeting of all employees, further discloses the utter disregard of the first principle of self-organization, freedom of choice in the selection of representatives."

for the reason that he should have found that each Department selected its own representative, to be elected by the entire group.

9. Excepts to that Portion of Finding 14 of Section II, which reads as follows:

"The meeting adopted by-laws which had been prepared on the basis of the Articles of Incorporation drawn by an attorney selected by the respondent's agent,"

for the reason that there is no evidence to substantiate this portion of the Finding.

10. Excepts to Finding 16 of Section II, for the reason that there is no evidence to substantiate such Finding.

11. Excepts to Finding 18 of Section II, for the reason that said Finding is not substantiated by evidence, and is contrary to law.

12. Excepts to that portion of Finding 23 of Section II, which reads as follows:

"For the reasons stated herein the employees connected with the production department, except operators of steam-driven equipment, should be considered a separate unit from the so-called office employees which includes draftsmen, employees in the general office, and employees in the payroll department."

for the reason that said Finding is not substantiated by evidence, and is contrary to law.

2395 13. Excepts to that particular portion of Conclusion 1 of the Conclusions and Recommendations, which reads as follows:

"* * * by dominating and interfering with the labor organization known as the Independent Union of Falk Employees; and by sponsoring and contributing support to it;"

for the reason that said Conclusion is not substantiated by evidence, and is contrary to law.

14. Excepts to Conclusion 2 of the Conclusions and Recommendations, for the reason that said Conclusion is not substantiated by evidence, and is contrary to law.

15. Excepts to Recommendation 4 (c) of the Conclusions and Recommendations, which reads as follows:

"Respondent, The Falk Corporation, withdraw all recognition from the Independent Union of Falk Employees as representatives of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay,

hours of employment or conditions of work, and disestablish all relations with such organization;"
for the reason that said Recommendation is contrary to law.

Alexander, Burke & Clark,
Attorneys for Independent Union of Falk Employees.

Dated: November 29th, 1937.

2397 NATIONAL LABOR RELATIONS BOARD,

Washington, D. C.

In the Matter of The Falk Corporation, and Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528.	Case No. C-293.

NOTICE OF HEARING.

Please Take Notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Friday, February, 25, 1938 at 12 o'clock noon in Room 326, Shoreham Building, Fifteenth and H. Streets, N. W. Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one hour.

You may appear and be heard if you so desire.

Dated, Washington, D. C., February 7, 1938.

Nathan Witt,
Nathan Witt,
Secretary.

(Seal)

2398 UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of
The Falk Corporation,
and
Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1528.

Case No. C-293.

Room 442,
Shoreham Building,
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place on February 25, 1938, at 12 Noon Before:

12 Noon

Before:

J. Warren Madden, Chairman.
Edwin S. Smith, Member.
Donald Wakefield Smith, Member.

Appearances:

Daniel J. Harrington, of Counsel to the Board.
Joseph A. Padway, International Union of Operating Engineers, Local 311, Milwaukee, Wisconsin.
Giles F. Clark, Independent Union of Falk Employees By Alexander, Burke & Clark, 110 E. Wisconsin, Milwaukee, Wisconsin.
Leon B. Lamfrom, 208 East Wisconsin Avenue, Milwaukee, Wisconsin.

2399 UNITED STATES OF AMERICA.

Filed Apr. 18, 1938.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the matter of The Falk Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528.

Cases Nos. R-278 and C-293.—Decided April 18, 1938.

Machinery Manufacturing Industry—Interference, Restraint or Coercion: expressed opposition to labor organization—Company-Dominated Union; domination and inter-

ference with formation and administration; support of—Discrimination: discharge: settlement effected; charges of, dismissed—Investigation of Representatives: controversy concerning representation of employees: controversy concerning appropriate unit—Unit Appropriate for Collective Bargaining: where other considerations determinative of appropriate unit are evenly balanced, decisive factor is the desire and choice of employees involved; determination of, dependent upon election results—Collective Bargaining: refusal to recognize representatives: charges of, dismissed—Election Ordered: to be held upon further order of Board, after compliance with this order.

Mr. Robert R. Rissman and Mr. S. G. Lippman, for the Board.

Lamfrom, Tighe, Engelhard & Peck, by Mr. Leon B. Lamfrom and Mr. A. J. Engelhard, of Milwaukee, Wis., for the respondent.

Mr. A. G. Goldberg, of Milwaukee, Wis., for the Operating Engineers.

Alexander, Burke & Clark, by Mr. Giles F. Clark, of Milwaukee, Wis., for the Independent.

Mr. Daniel J. Harrington, of counsel to the Board.

DECISION
ORDER
and
DIRECTION OF ELECTION

Statement of the Case.

On May 24, 1937, the Steel Workers Organizing Committee, herein called the S. W. O. C., led a charge, in behalf of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, herein called the Amalgamated, with the Regional Director for the Twelfth Region (Milwaukee, Wisconsin) and on August 2, 1937, filed an amended charge alleging that The Falk Corporation, Milwaukee, Wisconsin, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 4, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twelfth Region, issued its complaint against the respondent, alleging that the respondent had en-

gaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act. The complaint and accompanying notice of hearing were duly served upon the parties.

In respect to the unfair labor practices the complaint alleged in substance: (1) that all the employees of the respondent at its Milwaukee plant, except supervisory employees, draftsmen, employees in the general office, and employees of the pay-roll department, constituted an appropriate unit for the purpose of collective bargaining; (2) that a majority of the employees in such unit had designated the Amalgamated as its representative for the purpose of collective bargaining with the respondent; (3) that the respondent at various times, when requested by the Amalgamated, refused to bargain with the Amalgamated as the exclusive bargaining agency for all the employees in such unit; (4) that the respondent, on or about December 31, 1936, discharged Anton Kineh for engaging in concerted activities with other employees for their mutual aid and protection; (5) that the respondent refuses to reinstate Anton Kineh for the same reason; (6) that the respondent dominated, fostered, encouraged, and interfered with the formation, enlistment of membership, and administration of a labor organization known as the Independent Union of Falk Employees and has contributed and is now contributing financial and other support thereto; (7) that the respondent, by the foregoing acts had interfered with, restrained, coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

S. W. O. C. filed a petition, dated August 2, 1937, requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On August 6, 1937, the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 12, 1937, the respondent filed an answer to the complaint, in which it denied that it had engaged in the alleged unfair labor practices and requested that the complaint be dismissed, but admitted certain allegations as to the nature of its business.

24) The Independent Union of Falk Employees, herein called the Independent, filed a petition to intervene on

August 13, 1937, and on the same date, International Union of Operating Engineers, Local No. 311, herein called the Operating Engineers, also filed a petition to intervene, charging therein additional violations of Section 8 (1), (2), (3), and (5) of the Act by the respondent.

On August 14, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2) of the Rules and Regulations—Series 1, as amended, ordered that the two cases be consolidated for the purpose of hearing and that James C. Batten act as Trial Examiner.

Pursuant to notice, a hearing was held in Milwaukee, Wisconsin, on August 16, 17, 18, 19, 20, 23, 24, and 25, 1937, before James C. Batten, the Trial Examiner duly designated by the Board. At the hearing both the Independent and the Operating Engineers orally renewed their petitions for intervention and both petitions were granted. The Operating Engineers, however, was required by the Trial Examiner to serve on respondent's counsel an amended petition containing a more specific statement of the charges included in its original petition to intervene, and the respondent filed an answer thereto. At the conclusion of the hearing the respondent moved that the amended petition for intervention, filed by the Operating Engineers, be dismissed. The motion was denied by the Trial Examiner.

The Trial Examiner erred in allowing the Operating Engineers to intervene on the basis of the additional charges included in its petition and amended petition and in denying the respondent's motion to dismiss the amended petition. Those rulings are hereby reversed. Since the Board's complaint was not amended to include the additional charges, they were not in issue. Evidence, which was introduced under the charges in the petition as amended, is admissible only in so far as it is within the allegations of the complaint and we have considered such evidence only to that extent.

The Board, the respondent, the Operating Engineers, and the Independent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the conclusion of the Board's case, counsel for the Board moved to amend the complaint to conform with the proof thus far adduced, which motion was granted. Counsel for the respondent moved that both the petition and the complaint be dismissed and that each charge of the complaint be dismissed.

The Trial Examiner denied the motions for dismissal of the petition and of the complaint and reserved ruling on the motions to dismiss the separate charges of the complaint. At the conclusion of the hearing, the respondent renewed its motion to dismiss the petition and complaint. The Independent moved that the portion of the complaint alleging that the respondent dominated, fostered, encouraged, and interfered with the formation, enlistment of membership, and administration of the Independent and contributed financial and other support to it be dismissed. These motions were denied. Counsel for the Board moved that the complaint be amended to conform with the proof. The motion was granted, but limited in its application to the correction of minor variances between the proof and the allegations of the complaint.

The Board has reviewed the rulings of the Trial Examiner on motions and objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed, except the rulings on the Operating Engineers' petition for intervention as hereinabove stated.

In his Intermediate Report, filed November 2, 1937, the Trial Examiner found that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3)[1] and Section 2 (6) and (7) of the Act, and further found that the respondent had not committed unfair labor practices within the meaning of Section 8 (5) of the Act. Exceptions to the Intermediate Report were filed by the respondent on November 27, 1937, and by the Independent on November 29, 1937. On February 25, 1938, the respondent and the Independent presented oral arguments before the Board in support of their exceptions, while the Operating Engineers presented arguments in support of the findings of the Trial Examiner. Thereafter, briefs were submitted by the respondent and by the Independent, which have been considered by the Board. The Board has fully considered the exceptions to the findings of the Intermediate Report and finds them without merit.

Upon the entire record in the case the Board makes the following:

[1] Subsequent to the filing of the Trial Examiner's Intermediate Report, a settlement agreeable to all parties was effected in respect to the discharge of Anton Kinch. The settlement thus effected was approved by the Board on January 27, 1938. We will, therefore, dismiss the complaint in so far as it alleges that the respondent violated Section 8 (3) of the Act through the discharge of Kinch.

Findings of Fact.

I. The Business of the Respondent.

The Falk Corporation, the respondent herein, is a Wisconsin corporation, with its main office and plant in Milwaukee, Wisconsin. It is engaged in the design, production, sale, and distribution of steel castings, helical gears, speed reducers, speed increasers, motoreducers, marine drives, rolling drives and pinion stands, flexible couplings, contract machine work, and various other products.

2401 In the operation of its plant the respondent uses large quantities of pig iron and scrap steel, bar steel, coal, gray iron castings, silica sand and fireclay, nuts, bolts, screws, rivets, electric and gasoline motors, lumber, copper, tin, sheet metal, chemicals, and various other raw materials. Of these raw materials approximately 65 per cent originate outside the State of Wisconsin. Approximately 75 per cent of the respondent's sales are to points outside the State of Wisconsin.

II. The Unions.

Steel Workers Organizing Committee is a labor organization authorized to act on behalf of Amalgamated Association of Iron, Steel and Tin Workers of North America for collective bargaining purposes.

Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, is a labor organization affiliated with the Committee for Industrial Organization, herein called the C. I. O., through the Steel Workers Organizing Committee. It admits to membership all production employees in the respondent's plant, exclusive of supervisory employees, draftsmen, employees in the general office, and employees in the pay-roll department.

International Union of Operating Engineers, Local 311, is a labor organization affiliated with the American Federation of Labor, herein called the A. F. of L. admitting to its membership the powerhouse employees and steam-driven locomotive-crane operators of the respondent.

Independent Union of Falk Employees is an unaffiliated labor organization, which admits to membership all employees of the respondent, excluding officials, superintendents, assistant superintendents, foremen, and assistant foremen.

III. The Unfair Labor Practices.

A. The backgrounds of the unfair labor practices.

Prior to 1933, there was no form of employee representation in the respondent's plan. In the summer of 1933, after the enactment of the National Industrial Recovery Act, a Works Council was set up at the suggestion of Harold Falk, vice president and works manager of the respondent. Falk told the employees that it would be inadvisable to choose an outside labor organization and that the respondent would not allow a closed shop. At an election held subsequently ballots cast for outside representatives were not counted. The Works Council was composed of Employee and Management Representatives, the chairman and secretary being appointed by the management. Some time after its formation, the Employee Representatives, at their request, were allowed to meet alone to decide what they wished to discuss at the regular meeting with the Management Representatives. Employee Representatives were compensated at their respective hourly rates for time spent at meetings of the Works Council.

B. The formation of the Independent.

In April 1937, it seems to have been generally agreed between the Works Council and the respondent that the Works Council would have to be disestablished because of the provisions prohibiting company-dominated labor organizations in the Act and also in the so-called Severson Bill, then pending in the Wisconsin Legislature. On April 8, 1937, the Works Council held its last meeting at which meeting Harold Falk was present. There is testimony that he told the employees that they could form an independent union and that they could meet on the respondent's property to make arrangements for forming it, but that they would have to meet off the respondent's property after it was formed. Although Falk denied that he had made these statements, he admitted that at that meeting he had discussed the situation in another company's plant where there was trouble between the A. F. of L. and the C. I. O. He also admitted that at that meeting he had told the men that a raise which had been agreed on between the respondent and the Works Council to become effective June 1, 1937, would stand as long as the Works Council stood, but that, if another group came into being, the arrangements would be cancelled and new negotiations would have to be entered into with the new group. In view of the respondent's

hostility to outside unions, its domination of the Works Council, and Falk's admitted statements concerning the C. I. O. and A. F. of L. activities in another plant in conjunction with his discussion of the wage increase, his denial of his express approval of a prospective inside union and acquiescence in such a union's preliminary use of company facilities is not convincing.

On April 12, 13, and 14, 1937, a group of past and present Employee Representatives on the Works Council held four meetings in the basement of the plant hospital during working hours and discussed the formation of an inside union. Hydar, the personnel manager of the respondent, was instrumental in notifying employees of the meeting held on April 12. He did not remember who had asked him to notify these employees, but was certain that the person who had made the request was an employee.

Harold Falk was called into the meeting on April 12. He testified that he gave his impressions of the Wagner Act to the men as "near as he could." At this meeting Falk agreed to advance the date of the wage increase from June 1, 1937, to May 1, 1937, if it would make the men "feel any better" and to show the respondent's good faith. There is evidence that this action was suggested and taken as a means of keeping the C. I. O. out of the plant. Although the evidence is conflicting on this point, Falk's willingness, under the circumstances discussed, to advance the date of the wage increase, indicates that such a suggestion was made and acted upon to influence the men in their choice of a labor organization.

On April 13, the men again sent for Harold Falk. He was not in the plant, but his son, Richard, addressed the meeting as did Connell, a vice president of the respondent. Connell told the men that his interpretation of the Wagner Act was that the respondent could not help the men either financially or in an advisory capacity. The meeting was then adjourned. After the meeting, some of the men met Harold Falk in the plant. Falk told the men that it was all right to go ahead with the inside union. There is also evidence that he told the men that they would have to incorporate as quickly as possible because the C. I. O. was working in the plant, which statement was denied by Falk. At any rate, the men held another meeting at which it was decided to secure the services of an attorney. A committee was sent to Harold Falk for suggestions as to an attorney. Falk named two or three attorneys where-

upon Greget, one of the committee, said that Burke, one of the attorneys suggested by Falk, would be satisfactory. Falk then made an appointment with Burke for the men. Landry, president of the Amalgamated and one of those present at the meetings, claims that he objected strenuously to having Harold Falk suggest the attorney and that after his objection the men began to make up a story to tell in case anybody asked who suggested the attorney. Greget did not remember any protest being made by Landry, nor did he recall any discussion among the men to the effect that they would have to make up a story to tell if anyone asked who suggested the attorney.

A committee was appointed on April 13, 1937, to confer with Burke relative to the organization of an inside union. Burke told the committee at a conference on April 14 that if the inside union became established he would charge a fee, but that otherwise there would be no fee. Three members of the committee went to Burke's office the next day, but did not sign incorporation papers, which he had drawn up for the inside union, having previously decided that they would first organize as an association and incorporate later.

On April 18, 1937, the Independent held an organization meeting in a hall, which was not on the respondent's property. When asked who suggested the attorney, Greget answered that he had suggested him, having heard of him through an automobile accident in which he had been involved. Greget's failure to disclose the fact that Falk had suggested the attorney seems to confirm Landry's testimony and indicates that the organizers of the Independent both realized the company domination and influence involved in this incident, and feared that its disclosure would have a disastrous effect on their oragnizational activities. Nothing definite as to the form of organization that the inside union was to adopt was decided at the April 18 meeting. One of those present testified that they decided to "run along as an association and then later on incorporate." This amounted to a ratification of the decision on incorporation made by the committee when it had conferred with Burke.

When the meeting had been adjourned, three employees, who had attended it, discussed incorporation of the Independent with the attorney. They were joined by another employee, who said that, if he could get two other signers, he would go to the attorney's office next day and sign articles of incorporation. One of those present admitted, at the hearing, that the reason the Independent is a corporation today is because

of "a little intimate talk" between three employees and the attorney.

The next day, April 19, 1937, the three employees, who had attended the meeting on the previous day, went to Burke's office and signed the articles of incorporation, although they had not been given authority to do so. The articles of incorporation were immediately taken to the State Capitol at Madison, Wisconsin, and filed. On April 20, 1937, they were filed in the Register of Deeds Office at Milwaukee. On the same day the three incorporators notified the respondent by letter that the Independent was incorporated, that approximately 400 employees were members of it, and that a time and place was requested to discuss collective bargaining.

The three incorporators met with the respondent on April 23, 1937, and, on their statement that they represented a majority of the employees, the respondent recognized the Independent as bargaining agency for all the employees. No proof that it represented a majority was offered and none was required by the respondent.

During March, April, and May 1937, both the Amalgamated and the Independent conducted an intensive campaign for members, at times doing so during working hours. Some of the foremen, in discussions with the men, expressed their hostility to the C. I. O. and told them that an inside union would be better for them. At the hearing, the foremen testified that the management had ordered them not to express opinions on the subject, but admitted that they had expressed their opinion in "friendly" talks with the men.

Prior to and coincident with the active organization efforts of the Amalgamated and the Independent, the Operating Engineers had undertaken to organize a smaller group of the respondent's employees.

2403 The Operating Engineers began to organize the powerhouse employees of the respondent in February 1937, and by April had succeeded in obtaining application cards, signed by 14 of the 17 employees in the powerhouse. On or about April 12, 1937, Kingsland, the business representative of the Operating Engineers, conferred with Harold Falk and asked recognition of the Operating Engineers as bargaining agent for these employees. Falk replied that he wanted to know how the men in the powerhouse felt about it first. After the conference he interviewed the men individually to ascertain how many desired to be represented by the Operating Engineers. At the hearing Falk testified that he

may have expressed an opinion unfavorable to the Operating Engineers, when talking to the men at that time.

The Operating Engineers then sent post cards to the powerhouse employees stating that the conference between Falk and Kingsland had been favorable, that only working hours remained to be settled, and that a meeting for these employees was to be held on April 18, 1937. When Falk learned of these post cards, he sent to each employee in the powerhouse a letter stating: "(1) we are not in favor of a union (2) we will not agree to recognize Mr. Kingsland as bargaining agent for you unless you as a group signify your desire to have us do so (3) we are ready at all times to meet with you as a group or individually to discuss your problems." On April 28, 1937, counsel for the Operating Engineers accused Falk of coercing these employees. After this accusation, Falk called the powerhouse employees to his office individually to find out whether or not they had been intimidated by his former conversation with them. Although several of the powerhouse employees assured Falk in these individual conversations and later testified at the hearing that they were not intimidated by the conversations or letter, it is significant that no one appeared at the next meeting of the Operating Engineers held on April 18, 1937. Letters of withdrawal, which were prepared in the office of the attorneys for the Independent, were subsequently received about May 6, 1937, by the Operating Engineers from five of the engineers.

The sequence of events from the disestablishment of the admittedly company-dominated Works Council to the recognition of the Independent by the respondent compels the conclusion that the formation and continued functioning of the Independent were directly attributable to the above-described activities of the respondent. The respondent's antipathy to outside unions was amply demonstrated to the employees. At the last meeting of the Works Council, Falk's remarks respecting the establishment of an inside union disclosed to the employees the respondent's preference for such a union. This preference was further emphasized by the foremen's expressions of hostility to the C. I. O. and their advice that an inside union would be better for the employees. These opinions, expressed by persons in supervisory capacities, were intended to and did restrict the employees in their choice of a labor organization. The respondent translated this verbal preference into action. It permitted the meetings for the formation of the Independent to be held on its property during working hours. Hydar notified the employees to attend

the first of these meetings, which were addressed by Harold Falk and Connell, two of the respondent's principal officials, and by Falk's son, Richard. Harold Falk promised to advance the date of the wage increase as an inducement to the employees to form and join the Independent and gave them his sanction. The attorney, retained by the employees, was selected from among those suggested by Harold Falk and the appointment with him was arranged by Falk. The effectiveness of the respondent's interference with the administration of the Independent is further evidenced by the employees' abrupt decision to incorporate although they had previously decided to postpone such action. With the form of the Independent perfected in accordance with its desires, the respondent recognized it as the bargaining agent for all its employees on the mere statement of its incorporators that it represented a majority of such employees, without requiring any other proof of a majority. This hasty recognition of the Independent enabled the respondent to utilize it within 2 weeks as a pretext for denying collective bargaining to the Amalgamated.

We find that, by the above-stated acts, the respondent dominated and interfered with the formation and administration of the Independent and contributed support to it and thereby interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

C. The refusal to bargain collectively.

1. The appropriate unit.

The complaint alleged that all employees in the respondent's Milwaukee plant, except supervisory employees, draftsmen, employees in the general office, and employees in the pay-roll department, constituted an appropriate unit. In support of this allegation the Amalgamated pointed out at the hearing that the problems and interests of the production employees are different from those of the draftsmen and clerical employees. The basis of pay is likewise different as are the working hours. These differences are of such a nature as to preclude effective bargaining by one group for the other.

The Operating Engineers contends that the powerhouse employees of the respondent, including operators of steam-driven locomotive cranes, constitutes an appropriate
2404 unit. These employees are required by the City of Milwaukee to have a license in order to perform their duties.

Other employees cannot take their positions unless they are licensed engineers. The powerhouse is a separate building. The powerhouse employees are paid on a monthly salary basis.

In view of the facts described above, it appears that the powerhouse employees can be considered either as a separate unit, as claimed by the Operating Engineers, or as part of the large unit composed of production employees, as claimed by the Amalgamated. Falk testified that, for purposes of collective bargaining, the interests of the powerhouse employees could be effectively served either by representation with all the employees in the plant or by separate representation for these employees.

The Amalgamated and the Operating Engineers recognized this situation as is evidenced by the fact that at the hearing they entered into a stipulation, by which they agreed that, if the Board should direct an election, the employees in the power plant and the crane operators would vote separately to determine whether they desired to be represented by the Amalgamated or the Operating Engineers for the purpose of collective bargaining. This stipulation was to be effective only if, in such an election, the Independent were excluded from the ballot and only the names of the Amalgamated and the Operating Engineers appeared.

In such a case where the considerations are so evenly balanced, the determining factor is the desire of the men themselves.[2] On this point the record affords no help. There has been a swing toward the Operating Engineers on the part of the powerhouse employees and then away from it. We shall, therefore, order an election on the basis of the stipulation between the Amalgamated and the Operating Engineers. Upon the result of this election will depend the determination of the appropriate unit or units for purposes of collective bargaining. If the powerhouse employees choose the Operating Engineers, they will constitute a single appropriate unit and the other production employees will constitute another appropriate unit. Otherwise all the production workers, including the powerhouse employees, will constitute a single appropriate unit.

2. Representation in the unit claimed to be appropriate.

The financial secretary of the Amalgamated testified at the hearing that there were between 585 and 615 applications to

[2] See Matter of Globe Machine and Stamping Company, 3 N. L. R. B., No. 25.

membership in the Amalgamated around May 5, 1937, which was the date on which the Amalgamated requested collective bargaining from the respondent. He later testified, however, that the Amalgamated had about 677 application cards on May 5, 1937. The Amalgamated did not produce any records at the hearing to prove that it represented a majority of the employees, although the respondent demanded that the financial secretary produce his membership records. The minutes of the first meeting of the incorporators of the Independent, held on April 24, 1937, disclose that there were on that date 693 applications to membership in the Independent, while the minutes of a meeting on June 5, 1937, contain a statement by the secretary that there were 800 or more members. Figures submitted by the supervisor of the respondent's cost and pay-roll department, taken from the pay roll as of May 5, 1937, show that there were 1,316 employees, exclusive of miscellaneous employees, office and pay-roll employees, and drafting and engineering employees.

Since there was no clear showing that the Amalgamated represented a majority of the employees within an appropriate unit at the time it sought to bargain with the respondent, there was no violation of Section 8 (5) of the Act and the allegations of the complaint to that effect will, accordingly, be dismissed.

IV. The Question Concerning Representation.

It is apparent from the foregoing that a dispute exists concerning the appropriate unit or units and the representation of employees within such unit or units. Both the Amalgamated and the Operating Engineers have advanced conflicting claims.

We find that a question has arisen concerning representation of employees of the respondent.

V. The Effect of the Unfair Labor Practices and the Question Concerning Representation Upon Commerce.

We find that the activities of the respondent set forth in Section III above, and the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy.

We have found that the respondent dominated and interfered with the formation and administration of the Independent and has contributed support to it. Since its inception, and especially since the question concerning the
2405 representation of the respondent's employees has arisen, the respondent has used the Independent as a convenient weapon to prevent the exercise of its employees' rights to self-organization and collective bargaining. The rsepondent, in order to remedy its unlawful conduct, must withdraw all recognition from the Independent and completely disestablish it as a collective bargaining agency.

We have found that there is a question affecting commerce concerning the representation of the respondent's employees. We shall, therefore, order an election to be held among the employees of the respondent, who were in its employ during the pay-roll period immediately preceding our Direction of Election in order to determine the appropriate bargaining unit or units and the representation of employees within such unit or units. We shall direct that such election be held upon our further order after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order. In such election we shall make no provision for the designation of the Independent on the ballot.

Conclusions of Law.

1. Steel Workers Organizing Committee; Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528; International Union of Operating Engineers, Local 311; and Independent Union of Falk Employees are labor organizations within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of their right to self-organization, to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. By dominating and interfering with the formation and

administration of the Independent and by contributing support to it, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2), of the Act.

4. The unfair labor practices referred to in paragraphs 2 and 3 above, constitute unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. A question affecting commerce has arisen concerning the representation of employees of The Falk Corporation, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

ORDER.

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Falk Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From dominating or interfering with the formation or administration of the Independent Union of Falk Employees, or any other labor organization of its employees, and from contributing support to the Independent Union of Falk Employees or to any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Independent Union of Falk Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the Indepndent Union of Falk Employees as such representative;

(b) Immediately post notices in conspicuous places

throughout its Milwaukee plant and maintain such notices for a period of thirty (30) consecutive days stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that it has withdrawn all recognition from the Independent Union of Falk Employees as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and that it has completely disestablished said organization as such representative;

(c) Notify the Regional Director for the Twelfth Region in writing within ten (10) days from the date of this Order what steps it has taken to comply herewith.

3. The complaint is hereby dismissed (1) in so far as it alleges that the respondent committed unfair labor practices within the meaning of Section 8 (3) of the Act in dis-
2406 charging Anton Kinch, and (2) in so far as it alleges that the respondent has engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act.

DIRECTION OF ELECTION.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purpose of collective bargaining with The Falk Corporation, Milwaukee, Wisconsin, an election by secret ballot shall be conducted within such time as we may hereafter direct, under the direction and supervision of the Regional Director for the Twelfth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations (1) among the employees of said Company, exclusive of supervisory employees, draftsmen, employees in the general office, employees in the pay-roll department, powerhouse employees, and steam-driven locomotive crane operators, who were in the employ of the Company during the pay-roll period immediately preceding this Direction of Election, excluding those who since have voluntarily quit or have been discharged for cause, to determine whether or not they desire to be represented by Amalgamated Asso-

ciation of Iron, Steel and Tin Workers of North America, Lodge 1528, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining, (2) among the powerhouse employees and steam-driven locomotive crane operators of said Company, who were in the employ of the Company during the pay-roll period immediately preceding this Direction of Election, to determine whether they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, affiliated with the Committee for Industrial Organization, or by International Union of Operating Engineers, Local 311, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

2411 In the Matter of
The Falk Corporation
and
Amalgamated Association of Iron, Steel and Tin Workers of North America. Lodge 1528.

Case No. R-278 and C-293.

(Stamped) File in Formal File. National Labor Relations Board Docketed Apr 18 1938 H.

AFFIDAVIT AS TO SERVICE.

District of Columbia, } ss:

I, Joseph Zambuto, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 18th day of April, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision, Order, and Direction of Election to the following named persons, addressed to them at the following addresses:

Mr. Meyer Adelman, Field Director
Steel Workers Organizing Com.
3026 Plankington Arcade
Milwaukee, Wisconsin
Messrs. Lamfrom, Tighe, Engelhard and Peck
Att: Mr. Leon B. Lamfrom
208 East Wisconsin Av.
Milwaukee, Wisconsin
Messrs. Alexander, Burke, and Clark
Att: Mr. Giles F. Clark
110 East Wisconsin Av.
Milwaukee, Wisconsin
Mr. A. G. Goldberg
511 Warner Bldg.
Milwaukee, Wisconsin

Joseph Zambuto.

Subscribed and sworn to before me this 18th day of April, 1938.

Harold G. Wilson,
(Seal) *Notary Public, District of Columbia.*

My commission expires May 15, 1941.

1184 *Post Office Receipt.*

2407 Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Meyer Adelman.
(Signature or name of addressee)
E. Estescher.
(Signature of addressee's agent)

Date of delivery 4-19-1938.

Form 3811

(Reverse Side)

Post Office Department
Official Business

Penalty for Private Use to Avoid Payment of Postage, $300

Registered Article No. 69213
Insured Parcel No.

Postmark of Delivering Office

Return to National Labor Relations Board
(Name of Sender)

Street and Number,
or Post Office Box, _____

Washington, D. C.

(Stamp) Milwaukee Wis. Apr 19 1938 4:30 PM.

2408 Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Lanfrom, Tighe, Engelhard & Peck.
(Signature or name of addressee).
M. Baker.
(Signature of addressee's agent)

Date of delivery 4-19-1938.

Form 3811

(Reverse Side)

Post Office Department
Official Business

Registered Article
No. 69214
Insured Parcel
No.———

Penalty for Private Use to Avoid Payment of Postage, $300
Postmark of Delivering Office

Return to National Labor Relations Board
(Name of Sender)
Street and Number,
or Post Office Box, ———————— ————————
Washington,
D. C.

(Stamp) Milwaukee Wis. Apr 19 1938 4:30 PM.

2409 Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Alexander, Burke & Clark.
(Signature or name of addressee)
A. Nack.
(Signature of addressee's agent)

Date of delivery 4-19-1938.

Form 3811

(Reverse Side)

Post Office Department
Official Business

Registered Article
No. 69215
Insured Parcel
No.———

Penalty for Private Use to Avoid Payment of Postage, $300
Postmark of Delivering Office

Return to National Labor Relations Board
(Name of Sender)

Street and Number,
or Post Office Box, ———————————

Washington,
D. C.

(Stamp) Milwaukee Wis. Apr 19 1938 4:30 PM.

2410 Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

A. G. Goldberg.
(Signature or name of addressee)
E. Drexler.
(Signature of addressee's agent)

Date of delivery 4-19-1938.

Form 3811

(Reverse Side)

Post Office Department
Official Business

Registered Article
No. 69216
Insured Parcel
No.———

Penalty for Private Use to Avoid Payment of Postage, $300

Postmark of Delivering Office

Return to National Labor Relations Board
(Name of Sender)

Street and Number,
or Post Office Box, ———————————

Washington,
D. C.

(Stamp) Milwaukee. Wis. Apr 19 1938 4:30 PM.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

* * (Caption—6707) * *

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD.

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 1, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of The Falk Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528", the same being Case No. C-293 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Charge filed by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528, and sworn to May 24, 1937.
2. Amended charge filed by said union and sworn to August 2, 1937.
3. Complaint issued by the National Labor Relations Board August 4, 1937.
4. Notice of hearing issued by the National Labor Relations Board August 4, 1937.
5. Respondent's answer verified August 12, 1937.
6. Certified copy of order of consolidation and designating James C. Batten, Trial Examiner dated August 14, 1937.
7. Motion to Intervene and Petition for Intervention filed by the International Union of Operating Engineers Local No. 311, affiliated with the American Federation of Labor, sworn to August 13, 1937.
8. Copy of letter, dated August 14, 1937, granting motion of International Union of Operating Engineers Local 311 to intervene.
9. Petition of the Independent Union of Falk Employees to intervene, verified August 12, 1937.
70. Copy of letter, dated August 13, 1937, granting petition of Independent Union of Falk Employees to intervene.

11. Amended petition for intervention filed by the International Union of Operating Engineers, sworn to August 16, 1937.

12. Answer of the Falk Corporation to the amended petition for intervention, verified August 17, 1937.

Documents listed hereinabove under items 1-13, inclusive, are contained in the exhibits and included under the following item:

13. Stenographic transcript of testimony before James C. Batten, Trial Examiner for the National Labor Relations Board, on August 16, 17, 18, 19, 20, 23, 24, and 25, 1937, together with all exhibits introduced in evidence.

14. Copy of intermediate report of Trial Examiner Batten dated November 2, 1937.

15. Copy of Respondent's exceptions to the intermediate report filed November 29, 1937.

16. Copy of exceptions filed by Intervenor Independent Union of Falk Employees November 30, 1937.

17. Copy of notice of hearing for purpose of oral argument, dated February 7, 1938.

18. Copy of list of appearances at oral argument February 25, 1938.

19. Copy of decision, findings of fact, conclusions of law, and order of the National Labor Relations Board issued April 18, 1938, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 29th day of June, 1938.

Nathan Witt,

(Seal) *Secretary National Labor Relations Board.*

U. S. C. C. A. 7. Filed Jun 30 1938. Frederick G. Campbell, Clerk.

Entered July 22, 1938.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term 1937

Friday, July 22, 1938

National Labor Relations Board,
Petitioner,
vs.
The Falk Corporation,
Respondent.
No. 6707.

ORDER.

Upon the stipulation of the parties filed this day and due consideration having been given, it is ordered that in printing the transcript of the record in the above case none of the exhibits introduced in evidence at the hearing before the Board shall be printed except as follows:

I. The documents included in Board's Exhibit 3, as follows: Notice of Hearing of Complaint Case, being a part of Board's Exhibit 3a; Complaint, being 3d, Charge, being 3e; Amended Charge, being 3f.

II. All of Board's Exhibits 5, 17, 18, 19, 21, 22, 27, 32, 34, 36 and 38.

III. All of Respondent's Exhibits 5, 6, 8, 9 and 12.

IV. All of Independent's Exhibits 1, 2 and 3.

And it is further ordered that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and, that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

For the Court

J. Earl Major,
Judge, United States Circuit Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed July 22, 1938.

* * (Caption—6707) * *

STIPULATION.

It is hereby stipulated and agreed by and between the attorneys for the parties in the above entitled case that in printing the transcript of the record in the above case none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

I. The documents included in Board's Exhibit 3, as follows: Notice of Hearing of Complaint Case, being a part of Board's Exhibit 3a; Complaint, being 3d, Charge, being 3e; Amended Charge, being 3f.

II. All of Board's Exhibits 5, 17, 18, 19, 21 22, 27, 32, 34, 36 and 38.

III. All of Respondent's Exhibits 5, 6, 8, 9 and 12.

IV. All of Independent's Exhibits 1, 2 and 3.

It is further stipulated and agreed that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and, that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

Charles Fahey
General Counsel, National Labor Relations Board.

Dated: July 20, 1938.
Washington, D. C.

Leon B. Lamfrom
A. J. Engelhard
Attorneys for Respondent.

Dated: July 18, 1938.
Milwaukee, Wisconsin.

Endorsed: U. S. C. C. A. 7. Filed Jul 22 1938. Frederick G. Campbell, Clerk.

MICRO CARD 22
TRADE MARK ®
39
1385
MATTHEW BENDER & COMPANY
MB
56
microcard

UNITED STATES OF AMERICA

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Notice of petition for intervention

To ROBERT B. WATTS, ESQ., ATTORNEY FOR PETITIONER, NATIONAL LABOR RELATIONS BOARD, AND TO MESSRS. LAMPROM, TIGHE, ENGELHARD & PECK, ATTORNEYS FOR RESPONDENT, THE FALK CORPORATION,

Please take notice that, on the Petition of the Independent Union of Falk Employees, a copy of which is hereto attached, and on the pleadings filed herein, the undersigned will petition this Court, at a regular term, to be held at Chicago, Illinois, in the Federal Building, on the 4th day of October 1938, at 10:00 o'clock, in the forenoon, or as soon thereafter as counsel can be heard, for an order permitting the Independent Union of Falk Employees, the petitioner herein, to intervene as a party in the above entitled cause, and for such other relief as may be just.

Dated at Milwaukee, Wisconsin, this 11 day of August 1938.

ALEXANDER, BURKE & CLARK,
FRANK P. BURKE,
GILES F. CLARK,
Attorneys for Petitioner,
Independent Union of Falk Employees.
P. O. Address 110 East Wisconsin Avenue, Milwaukee, Wis.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 605 to 1191, inclusive, contain a true copy of the Volume 11 of the printed record, printed under my supervision and filed on the seventeenth day of August 1938, which, together with Volume 1 of the printed record and the Exhibits not reproduced in the printed record, certified herewith

under separate certificates, constitutes the record upon which the following entitled cause was heard and determined: National Labor Relations Board, Petitioner vs. The Falk Corporation, Respondent, No. 6707, October Term, 1938, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of September A. D. 1939.

[SEAL] FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fifth day of October, in the year of our Lord one thousand nine hundred and thirty-seven, and of our Independence the one hundred and sixty-second.

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of National Labor Relations Board

And, to-wit: On the thirty-first day of August 1938 there was filed in the office of the Clerk of this Office, a Notice and Petition for Intervention, which said Notice and Petition are in the words and figures following, to-wit:

UNITED STATES OF AMERICA

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition by Independent Union of Falk Employees for leave to intervene in the above-entitled cause

To the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

The Independent Union of Falk Employees, your petitioner, by its attorneys, Alexander, Burke & Clark, respectfully alleges and shows, as follows:

That it is an organization of employees of The Falk Corporation, of Milwaukee, Wisconsin, incorporated under the laws of the State of Wisconsin, and, at the time of the hearing of the above matter, before the National Labor Relations Board, had a membership consisting of over fifty percent (50%) of the employees employed by The Falk Corporation, not including executives, superintendents, foremen, assistant foremen, and others in a supervisory capacity, and was authorized, by its members, to represent them, for the purpose of collective bargaining, as outlined in the National Labor Relations Act, with their employer, The Falk Corporation.

That certain charges, sworn to on May 24, 1937, by Meyer Adelman, Field Director of the Steel Workers Organizing Committee, were filed on said day, with the National Labor Relations Board, on behalf of the Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge No. 1528, charging The Falk Corporation with engaging in certain unfair labor practices, as defined by the National Labor Relations Act.

That, thereafter, a hearing on said charges was had, at Milwaukee, Wisconsin, before an Examiner, the Honorable James C. Batten, designated by the National Labor Relations Board for that purpose.

That the Independent Union of Falk Employees filed a petition to intervene in said hearing, on August 13th, 1937, and was given permission so to do, by the Trial Examiner, on August 16th, 1937.

That your petitioner was represented by its counsel in said hearing, and produced witnesses on its behalf.

That, thereafter, and on November 2, 1937, the Trial Examiner filed his Intermediate Report, in which he found, among other things, that The Falk Corporation had engaged in unfair labor practices within the meaning of Section 8, Subsection 1, 2, and 3, and Section 2, Subsection 6 and 7, of the National Labor Relations Act.

The Trial Examiner, in his Intermediate Report, found that:

"The Falk Corporation, by dominating and interfering with the administration of the Independent Union of Falk Employees and with the formation of this labor organization and by contributing support to this labor organization, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (2) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act."

That, thereafter, and on November 29, 1937, the Independent Union of Falk Employees filed Exceptions to the Findings of the Trial Examiner, as found in his Intermediate Report.

That, thereafter, and on February 25, 1938, the Independent Union of Falk Employees, by its counsel, presented oral argument before the National Labor Relations Board, at Washington, D. C., in support of the Exceptions filed by it.

That, thereafter, and on the 18th day of April 1938, the National Labor Relations Board filed its Decision, Order, and Direction of Election in said matter.

That, thereafter, and on or about the 29th day of June 1938, the National Labor Relations Board notified your petitioner that it had filed with the above-named Court a petition to enforce its Order, dated April 18th, 1938.

That the Independent Union of Falk Employees has not been made a party to the proceeding before the above-named Court, to enforce the Order of the National Labor Relations Board.

That the Order of the National Labor Relations Board, among other things, provides that The Falk Corporation:

"(a) Withdraw all recognition from the Independent Union of Falk Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employments, and completely disestablish the Independent Union of Falk Employees as such representative;

"(b) Immediately post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty (30) consecutive days stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that it has withdrawn all recognition from the Independent Union of Falk Employees as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and that it has completely disestablished said organization as such representative;"

That substantial rights of the Independent Union of Falk Employees will be affected by the Order of this Court enforcing the said Order of the National Labor Relations Board.

That the rights of the members of the Independent Union of Falk Employees, as provided by the National Labor Relations Act, Section 9 (a), and, particularly, that section reading as follows:

"Provided, that any individual employee, or group of employees, shall have the right, at any time, to present grievances to their employer."

is by the Order of the National Labor Relations Board denied to the members of the Independent Union of Falk Employees.

That it is necessary that the Independent Union of Falk Employees be permitted to intervene, to assure a full and complete hearing of said petition filed by the Board, and for the further reason that the National Labor Relations Board seeks to deny to the members of said Independent Union of Falk Employees rights guaranteed to them by the National Labor Relations Act.

Wherefore, your petitioner, the Independent Union of Falk Employees, prays that this Court make an order granting it leave to

intervene herein, as a party, and for such other and further relief as to this Court seems just.

INDEPENDENT UNION OF FALK EMPLOYEES,
By FRED C. WILSON, *President*,
Petitioner.

ALEXANDER, BURKE & CLARK,
FRANK P. BURKE,
GILES F. CLARK,
Attorneys for Petitioner,
Independent Union of Falk Employees.

STATE OF WISCONSIN,
Milwaukee County, ss:

Fred C. Wilson, being first duly sworn, on oath deposes and says that he is an officer, to-wit: the President of the Independent Union of Falk Employees, the petitioner named in the foregoing petition, and makes this verification for and on its behalf, being duly authorized so to do; that he has read the above and foregoing petition and knows the contents thereof, and the same is true of his own knowledge, excepting as to those matters therein stated on information and belief, and as to those, he believes it to be true.

FRED C. WILSON.

Subscribed and sworn to before me this 12 day of August, A. D., 1938.

[SEAL] GILES F. CLARK,
Notary Public, Milwaukee Co., Wis.

My commission expires April 6, 1941.

And afterwards, to-wit: On the first day of October 1938, the following further proceedings were had and entered of record, to-wit:

Saturday, October 1, 1938

Court met pursuant to adjournment

Before Hon. J. EARL MAJOR, Circuit Judge

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of the National Labor Relations Board

On petition of counsel for Independent Union of Falk Employes, It is ordered that Independent Union of Falk Employes be, and they are hereby granted leave to intervene in this cause.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fourth day of October, in the year of our Lord one thousand nine hundred and thirty-eight, and of our Independence the one hundred and sixty-third.

And afterwards, to-wit: On the fourteenth day of October 1938, the following further proceedings were had and entered of record, to-wit:

Friday, October 14, 1938

Court met pursuant to adjournment

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER E. TREANOR, Circuit Judge

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of the National Labor Relations Board

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Robert B. Watts, counsel for Petitioner, Mr. Leon B. Lamfrom, counsel for Respondent, and by Mr. Giles F. Clark, counsel for intervenor, Independent Union of Falk Employees, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the seventh day of March 1939, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 6707. October Term, 1938. January Session, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

March 7, 1939

Before EVANS, MAJOR, and TREANOR, Circuit Judges

Petition for enforcement of order of National Labor Relations Board

Respondent is a Wisconsin corporation operating a plant in Mil-

known as the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528, in 1937, preferred charges of unfair labor practices against respondent with the National Labor Relations Board. These charges, after investigation, resulted in the National Labor Relations Board's filing a complaint against respondent, which, in turn, filed its answer wherein it denied all charges of unfair labor practices. A somewhat lengthy hearing was had before a trial examiner designated by the Board. He made and filed a report wherein he found against respondent. He reported respondent had engaged in, and was engaging in, unfair labor practices within the meaning of section 8 (1), (2), and (3) of the Act [1] and recommended that it cease and desist therefrom, and further that it take certain affirmative action to remedy these alleged unlawful practices. The examiner also found that respondent had not violated section 8 (5) of the Act. Respondent and the Independent Union of Falk Employees, hereinafter termed the Independent, filed exceptions to the examiner's report. The Board took up the matter, heard oral arguments, received briefs, and later, on April 18, 1938, made and filed a decision which set forth its findings of fact and conclusions. It also entered an order directed to respondent and injunctional in character.

Petitioner seeks from us an order of enforcement of its order against respondent, as provided for in section 10 (e) of the Act.

EVANS, Circuit Judge. Respondent has greatly narrowed the controverted issues by conceding the interstate character of the business transacted by it, the jurisdiction of petitioner over it, and the existence of a labor dispute such as falls within the purview of the National Labor Relations Act.

It squarely meets the fact issue and unequivocally denies that it ever engaged in unfair labor practices. As a result, the sole question before us is the sufficiency of the evidence to support the findings of the examiner which were approved by the Board. In short, we are to ascertain whether respondent engaged in unfair labor prac-

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[1] 29 U. S. C. A. Sec. 151.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Section 8 (1), (2), (3) (Title 29 U. S. C. A. Sec. 158).

"It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

"(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in sections 701 to 712 of Title 15, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this chapter as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made.

tices such as are condemned in section 8 (1) and (2). Specifically we are asked to determine whether the evidence supported the finding that (1) respondent interfered with, restrained, or coerced its employees in the exercise of their right to self-organize, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or in mutual aid or protection or that (2) respondent attempted to dominate or interfere with the formation or administration of a labor organization in which its employees, or some of them, were members or about to become members.

The quantum of proof necessary to sustain a finding by the Board was defined in the recent decision of National Labor Relations Board, petitioner, v. Columbian Enameling and Stamping Co., Inc., respondent, decided February 27, 1939. There, it was said:

"Section 10 (e) of the Act provides: '* * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred. * * * Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' Consolidated Edison Co. of New York v. National Labor Relations Board, supra, and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."

The pronouncement of the test to be applied by a reviewing court to ascertain whether a finding by the National Labor Relations Board "is supported by the evidence" appears in another late case, decided December 5, 1938, Consolidated Edison Co. of New York v. National Labor Relations Board. There, the court said:

"* * * The companies contend that the Court of Appeals misconceived its power to review the findings and, instead of searching the record to see if they were sustained by 'substantial' evidence, merely considered whether the record was 'wholly barren of evidence' to support them. We agree that the statute, in providing that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive,' means supported by substantial evidence. Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U. S. 142, 147. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Appalachian Electric Power Co. v. National Labor Relations Board, 93 F. (2d) 985, 989; National Labor Relations Board v. Thompson Products, 97 F. (2d) 13, 15; Ballston-Stillwater Co. v. National Labor Relations

Board, 98 F. (2d) 758, 760. We do not think that the Court of Appeals intended to apply a different test. In saying that the record was not 'wholly barren of evidence' to sustain the finding of discrimination, we think that the court referred to substantial evidence. Ballston-Stillwater Co. v. National Labor Relations Board, supra.

"The companies urge that the Board received 'remote hearsay' and 'mere rumor.' The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. Interstate Commerce Commission v. Baird, 194 U. S. 25, 44; Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, 93; United States v. Abilene & Southern Rwy. Co., 265 U. S. 274, 288; Tagg Bros. & Moorhead v. United States, 280 U. S. 420, 442. But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence."

The substance of the Board's findings is set forth in the margin.[2]

In support of the finding petitioner relies on the following alleged acts by respondent's managerial forces as indicative of an intent to

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[2] The respondent is a Wisconsin corporation engaged in the design, production, sale, and distribution of steel castings, gears, speed reducers, and various other products. 65% of its raw products come from outside the State; 75% of its sales are to points outside the State.

The Steel Committee is the authorized bargaining agent of the Amalgamated Association, which is an affiliate of the C. I. O. The Operating Engineers local is an affiliate of the A. F. of L. The Independent Union is a company union.

There was no employee representation prior to 1933. After the enactment of the N. I. R. A. a Works Council was set up at the suggestion of Harold Falk, vice-president of respondent, who advised the employees "that it would be inadvisable to choose an outside organization and that the respondent would not allow a closed shop." Ballots cast for outsiders were not counted. The chairman and secretary of the Works Council were appointed by the management. Employee representatives were paid for time spent at Works Council meetings. The Works Council held its last meeting April 8, 1937, because it was thought in conflict with State and Federal legislative policy against company-dominated unions. There was testimony that Harold Falk at this last meeting told them that they could form an independent union on the company's property but would have to thereafter meet off the property. Falk stated he said that another company was having difficulty between the C. I. O. and A. F. of L. unions; that the pay raise which had theretofore been agreed upon to become effective June 1, 1937, would stand only so long as the Works Council stood, and if it fell, new negotiations would have to be had.

Members of the Works Council met April 12, 13, and 14 in the plant. Falk talked concerning the Wagner Act at the April 12 meeting, and agreed to advance the pay raise from June 1, to May 1, to show the company's good faith—it is argued it was made to keep the C. I. O. out of the plant, and to influence the choice of the labor organization to be selected.

Employees sent for Harold Falk to talk at a meeting on April 13, but he was not available. Connell, a vice-president, told them that under the Wagner Act he could not advise them. After the meeting some of the men met Harold Falk and he told them it was all right to go ahead with the inside union. He denied he also told them to work quickly because the C. I. O. was working in the plant. The Committee decided to get an attorney and on suggestion of Falk hired Attorney Burke. Falk made the appointment to confer with Burke. There was evidence of agreement to conceal who suggested the attorney. A committee conferred with Burke on April 14. The Independent had a meeting on April 18, and the leaders on being questioned as to who suggested Attorney Burke did not disclose the truth. The Board interprets this secretiveness to mean that the organizers of the Independent realized the company's domination and feared a disastrous effect would follow its disclosure. The meeting in effect adopted the committee's conclusion made at its meeting with Burke to run along as an association and incorporate later. They incorporated after an intimate talk between three employees and the

prevent the free exercise of the employees' right to organize for collective bargaining.

1. Respondent's hostility to outside labor organizations.

2. Respondent's action in anticipating State and national legislation by creating a Works Council, an employee organization, which it controlled through the appointment of its chairman and secretary. Its control and domination of this inside labor organization were manifested by warnings to the employees by the personnel manager that no employee was to vote for "any outsider." On one occasion when this direction was ignored, a second election was ordered and employees told "not to waste their time" on outsiders as all ballots for them would be destroyed. The employees were also notified that the company would not bargain with an outsider. The structure and functioning of the Works Council demonstrated its continuance would violate section 8 (2) after such legislation was enacted.

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attorney. The three employees signed the articles of incorporation although without authority so to do. They were filed April 20, 1937. The company was notified and told that about 400 employees were members, and requested a meeting for collective bargaining. The meeting was held April 23 with the three employees present. The company required no proof other than the statement of the incorporators that they were authorized representatives of a majority of the employees.

Amalgamated and Independent conducted an intensive campaign during March, April, and May; the foremen expressed their hostility to C. I. O. and preference for inside union; they said the management had ordered them not to express opinions on the subject, but admitted that they had expressed their opinion.

The Operating Engineers at the same time were attempting to organize a smaller group of employees, in the powerhouse. They succeeded in getting applications from 14 or 17 employees, but Mr. Falk talked with these men, and not one showed up at a meeting of the union. Falk had sent them a letter stating he was not in favor of a union. Letters of withdrawal from the union were sent in by five engineers; these letters were prepared in the office of the attorneys for Independent.

The Board concluded that the Independent was directly attributable to the activities of respondent. Respondent's antipathy to outside unions was known to the employees. The hasty recognition of the Independent enabled the respondent to utilize it within two weeks as a pretext for denying collective bargaining to the Amalgamated.

These are the acts relied on to show respondent dominated and interfered with the formation and administration of the Independent and contributed support to it and thereby interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

The Board ordered an election by the powerhouse employees to determine if they wanted to belong to the separate unit of the Operating Engineers or to the larger unit of production employees under the Amalgamated.

The Board dismissed the charge in the petition that there was a violation of section 8 (5) charging refusal by the company to bargain collectively with the Amalgamated around May 5, 1937, because the records show that Independent had from 693 to 800 members out of about 1,316 employees, and therefore Amalgamated did not prove it represented a majority of the employees.

The Board found that the respondent dominated and interfered with the formation and administration of the Independent and contributed support to it; and used the Independent as a weapon to prevent the employee's right to self-organize. It ordered the withdrawal of all recognition of the Independent.

Inasmuch as this matter affected commerce the Board ordered an election to determine the appropriate bargaining unit and the representation of employees.

Conclusions. The Steel Workers Committee, Amalgamated Association, Operating Engineers, and Independent Union are all labor organizations within meaning of Sec. 2 (5).

The respondent is engaged in unfair labor practices under Sec. 8 (1) by interfering with employees' right to self-organization; it is engaging in unfair labor practices within Sec. 8 (2) by contributing support to and dominating formation of Independent; and these two matters constitute unfair labor practices within meaning of Sec. 2 (6) (7) of the Act. A question affecting commerce has arisen concerning representation of employees within meaning of Sec. 9 (c) and Sec. 2 (6) (7).

Order. Respondent and its officers are ordered to cease and desist from dominating Independent or any other labor organization of its employees and contributing support to any such organization; from interfering with their employees' right to self-organization; collectively bargain; to withdraw all recognition from the Independent as the bargaining agent of its employees; to immediately post notices in conspicuous places in its plant stating that it will cease and desist as aforesaid, and that it has completely disestablished Independent as representative. The complaint is dismissed so far as it alleges unfair labor practices under Sec. 8 (3) in discharging Anton Kinch, and in so far as it alleges that the respondent has engaged in an unfair labor practice under Sec. 8 (5).

3. The dissolution of the Works Council was used by respondent as a means of entrenching the Independent as its successor.

4. Respondent used an offer of wage increase as a lever to discourage connection with outside organizations. Supporting this assertion petitioner points to a statement by the vice-president, made on the occasion of the dissolution of the Works Council, that a general increase scheduled for June 1 would be advanced to May 1, presumptively for the purpose of preventing an outside organization—the C. I. O.—or the A. F. of L.—from organizing the company's employees. This alleged reference to the C. I. O. and A. F. of L. is denied by Falk.

5. The management took the initiative in organizing and launching the Independent after learning that the Works Council could no longer be maintained.

6. In promoting and organizing the Independent, respondent played a dominating part; the personnel manager actively participated in arranging for the meeting, distributing notices thereof; his activities and attitude as disclosed by a statement that he believed it was the business of the company to see to the notification of employees of the meeting for the purpose of organization of the Independent; the superintendents and foremen caused or "saw to it" that employees attended the meeting and gave the employees to understand that the Independent had the backing or approval of the company.

7. The meeting of April 12 was held upon the company's grounds. At the meeting to ascertain whether the Independent should be organized to take the place of the Council, the management announced that it would advance the date of the increase in wages if the employees immediately joined the Independent. The advance from June 1 to May 1 as the effective date of increase in wages was inconsistent with the management's previous assertion that the prices for the new orders would go into effect June 1.

8. Respondent selected an attorney who thereafter was more solicitous of respondent's wishes than he was of the welfare of the employees.

9. Respondent paid the organizers their regular hourly wage for the time spent at the meetings leading up to the organization of the Independent as well as for the time spent in conferences with Burke, the attorney selected by respondent. It is true that later these amounts were deducted from the organizers' pay on advice of counsel for the respondent, but not until after the Independent was organized and recognized by respondent as the sole bargaining agent. Failure to inform the employees of the selection of Burke by the management indicated an intent to conceal.

10. Respondent's recognition of Independent as exclusive agent without ascertaining whether it represented the majority and its refusal to bargain with an outside union that claimed to represent a

majority. Respondent used its influence to overcome a majority of the Engineers who had previously requested recognition as representatives of the men employed in the power house. The management consistently made known its preference for the Independent and assisted in distributing cards, and the supervisory staff consistently resorted to action which would indicate hostility to unions and in particular to outside unions.

The foregoing constitutes the basis of the Board's findings. The examiner believed the charges to be true. So did the Board.

We are satisfied that some of these charges were explained satisfactorily by the respondent. Others, standing alone, afford no support for the Board's conclusions, if true. For example, we are convinced that respondent was innocent of any intention to influence action when it permitted the use of its premises as a meeting place of its employees. Moreover, it corrected its action in paying members of the committee who were perfecting the organization of the Independent during working hours, after it learned that such payments might be construed as an act of preference towards Independent. This deduction from the employees' wage was after the organization had been perfected, but it impresses us as indicative of fair treatment of employees who were losing time attending meetings preliminary to organizing a union. It indicates the respondent was anxious to comply with the letter and the spirit of the law. We fail to find in these payments of a few hours' committee work any evidence of attempted domination of employees' choice of union.

Likewise, we can see nothing to criticize in Mr. Falk's action expressing a preference for a local over an outside union. Especially is this true where the employee asks the employer for advice. There is much evidence in this record which is indicative of a very wholesome cooperative spirit existing between management and employees. Surely, it is desirable and bespeaks the confidence of employees in the management to have the old employees ask the executive officer of the employer to express his views and his labor union preference.

On the other hand, the position of the employer is a most delicate one. Surely, he has the right to his views. And the right to entertain views is rather valueless if it be not accompanied by the right to express them. And this right to express his views is clearer when they are expressed in response to an interrogatory by one of his employees. And yet, the voice of authority may, by tone inflection, as well as by the substance of the words uttered, provoke fear and awe quite as readily as it may bespeak fatherly advice. The position of the employer, where, as here, there is present, genuine and sincere respect and regard, carries such weight and influence that his words may be coercive when they would not be so if the relation of master and servant did not exist.

It must be understood that we are not the fact-finding body. Review of a discretionary order of an administrative body is quite

Our duty is to ascertain whether there is substantial evidence to support the charges found by the Board.

We are satisfied that such evidence appears in the record. Not only does it appear, but taken as a whole it rather conclusively points to the findings made by the Board. If certain testimony be accepted as true, and we are not prepared to reject it, the conclusion is inescapable that respondent was and is strongly and outspokenly opposed to a closed shop; that it earnestly endeavored to prevent the unionizing of its employees and when the inevitable became imminent, it sought to dominate the formation, organization, and activities of the union least objectionable to it. It thereby interfered with the employees' free right to self-organization which is in violation of section 8 (1) and (2).

Respecting the right of the employee to unionize and to be free of employer influence in so doing, Congress has spoken and the court has sustained the legislation. The language of the court has put at rest any doubt which respondent may have previously entertained. It said (Nat. Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 33):

"Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority."

The court further said (ibid, page 42):

"Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. The opinion in the case of Virginian Railway Co. v. System Federation, No. 40, supra, points out that, in the case of carriers, experience has shown that before the amendment, of 1934, of the Railway Labor Act 'when there was no dispute as to the organizations authorized to represent the employees and when there was a willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided.' That, on the other hand, 'a prolific source of dispute had been the maintenance by the railroad of company unions and the denial by railway management of the authority of representatives chosen by their employees.'"

Order to Post Notices.—The Board ordered the respondent to post notices for thirty days, stating that it "will cease and desist" doing the acts prohibited by the order, and that it has withdrawn

all recognition of the Independent Union as the representative of its employees for the purpose of dealing with it.

Objection is made to this order on the ground that it is compelling the respondent to make a public admission of guilt. In support of its requested modification of the Board's order, respondent cites National Labor Relation Board v. Abell Co., 97 F. (2d) 958, where the court relieved the employer from that part of the order which required the posting of such a notice. We are convinced, however, that this case can not serve us as precedent, but that in a matter of this kind, each decision must rest upon the facts of the individual case.

It is argued that the posting of such a notice containing a statement that it will cease and desist from prohibited actions in the future implies that respondent has indulged in such practices in the past.

We differ with the Fourth Circuit's conclusion in that we do not draw the inference from an enforced compliance with an order which required the employer to state it "will cease and desist" from enumerated practices, that it is thus making an admission, voluntary or involuntary, that it has in the past been guilty of such practices. The purpose of the notice is to convey to the employees the knowledge of a guarantee of an unhampered right in the future to determine their own labor affiliation. The very fact that the company resists the enforcement of the "cease and desist" order is evidence not of admission or acquiescence in a determination of guilt, but of a contrary belief on the part of the employer.

The factual controversy having been settled officially and judicially, the losing party submits and as a good loser complies with the terms fixed by the order of the fact finder. It not only should submit to the finding of the arbiter, it must do so. That is the logic of the situation. Moreover, the findings are against the respondent. The final order disposing of any case must be on the basis of the determinative findings, not on an attempt to mollify the losing party. It is hardly necessary for us to observe that our opinion is not to be construed as denying to the employee the right to organize or join an independent union as readily as an organized union. The employees must be perfectly free at all times, and this means in the future, to select the union they prefer.

We conclude that the order of the Board is valid and that its petition for enforcement should be, and is hereby, granted.

A true Copy.
Teste.

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to-wit: On the seventh day of March 1939 the following further proceedings were had and entered of record, to-wit:

Tuesday, March 7, 1939

Court met pursuant to adjournment

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER E. TREANOR, Circuit Judge

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of the National Labor Relations Board

This cause came on to be heard on the petition for enforcement of an order of the National Labor Relations Board entered in this cause, the Answer thereto, the transcript of the record of proceedings before the said Board, and the briefs of counsel, and was argued by counsel.

On consideration whereof, it is ordered that the said petition for enforcement of the Order of the National Labor Relations Board, entered on April 18, 1938, be, and the same is hereby, granted.

And afterwards, to-wit: On the twenty-third day of May 1939 the following further proceedings were had and entered of record, to-wit:

Tuesday, May 23, 1939

Court met pursuant to adjournment

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER E. TREANOR, Circuit Judge

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Petition for enforcement of order of the National Labor Relations Board

Now this day come the parties by their counsel, and this cause comes on to be heard on the form of decree to be entered in this

cause, and on oral argument by Mr. Robert B. Watts, counsel for petitioner, and by Mr. A. J. Engelhard, counsel for respondent, and the Court having heard the same takes this matter under advisement.

It is further ordered that leave be, and it is hereby, granted to petitioner to file within five days additional suggestions, and to respondent to file within five days thereafter a reply thereto.

And afterwards, to-wit: On the thirteenth day of July 1939 there was filed in the office of the Clerk of this Court an Opinion on Objections to the Entry of the Final Decree, which said Opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 6707. October Term, 1938, April Session, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

July 13, 1939

On objections of the Board to the entry of the final decree as drafted by the court

Before EVANS, MAJOR, and TREANOR, Circuit Judges.

EVANS, Circuit Judge. Upon the filing of the opinion in this case both parties submitted draft orders for entry by this court. We found ourselves unable to accept either of the proposed orders and therefore drew one ourselves. To this order, the National Labor Relations Board filed objections, and a hearing was had at which time both parties gave us the benefit of extended oral arguments which were supplemented by briefs.

Controversy arises over the following paragraphs which this court on its own volition included in the final order:

"It is further ordered that said respondent withdraw recognition of the Independent Union as the representative of all or any of its employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment of labor; provided, however, that the said employees shall remain free to choose at the coming election, or any future election, the Independent Union to represent them in labor relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union. * * *

"It is further ordered that this court, by this order, is not approving nor is it disapproving the direction of the National Labor Rela-

tions Board in reference to a coming or possible election by employees to choose their bargaining agency, and this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc."

If we had nothing before us but the terms of an election by the employees about to take place, we would not act. The holdings of courts would justify our nonaction at this stage of the proceedings. Armour & Co. v. N. L. R. B., decided by this court, Oct. 10, 1938, on authority of Matter of Petition of N. L. R. B., decided by U. S. Supreme Court, 304 U. S. 486; N. Y. Handkerchief Co. v. N. L. R. B., decided May 27, 1938, 97 F. (2d) 1010.

We are, however, not merely passing on the terms of a contemplated or coming election. We have much broader and comprehensive issues to deal with. We are disposing of a labor dispute case wherein the proceedings have gone beyond mere plans by the Board for the calling of an election. We are, upon the Board's petition, disposing of a labor dispute which involved alleged interference on the part of the employer with the selection of the bargaining agent by the employees.

In affirming the finding of the Board that such interference occurred, we have, in addition to ordering certain action by the employer (a disclaimer, so to speak) before us for final disposition, the matter of the selection of the bargaining agent. It is not a case of our assuming jurisdiction in reference to an election, which may be held or called off, and therefore is not in the state of finality which permits of review, but we are passing upon the application of the Board for an order which deals with the selection of a bargaining agent and which, if we adopt the Board's position, proposes to eliminate for all time one of the candidates—the Independent Union. Under such circumstances we think the jurisdiction of the court to dispose of the matter clearly exists. Since the foregoing was written the Sixth Circuit has announced an opinion which upholds jurisdiction of the court of appeals upon facts not as strong as ours. (International Brotherhood of Electrical Workers v. Nat. Labor Relations Board, decided June 28, 1939.)

Nor can final disposition of the order which the Board has petitioned this court to enforce be made without a consideration of the wishes of the employees, as well as of the action of the employer. The final disposition of this dispute calls for determination of a very vital question, namely, the right of the employees to freely select their bargaining agency. It may be true, and the Labor Board has so found and we have approved of its finding, that the employer exerted improper influence in favor of the Independent Union as the employees' bargaining agency and for that reason the selection of that body is, by this order, set aside. This, however, does not justify our refusing to the employees the right to freely select their bargaining agency—even though their selection be the same one as

was chosen before, when there was improper influence by the employer.

The situation is not dissimilar to that of an election where two political parties are seeking the favor of the electorate. In the course of one election improper influence was exerted. As a result the election is set aside and a new one is ordered. Assuming the second election is to give to the electors free opportunity to select their choice, the elimination of one party or its candidate from the ballot would not promote such an end. The spirit of the National Labor Relations Act calls for the free, the unhampered exercise of the employees' right to choose their bargaining agent. That free right does not exist when the employer influences the employees' action by methods which are condemned by the law or the decisions of the courts. Neither is it free or unhampered when the employees are denied the right to select one of the agencies or candidates by forcing that agency off the ballot.

It is for this reason that we have provided in the order that the coming election shall be free, uninfluenced by the employer and unhampered by any election order which eliminates as a contender one agency which has, apparently, substantial support among the employees. A copy of the order is here set forth:

TITLE

Whereas the National Labor Relations Board has petitioned this court for an order enforcing its order entered April 18, 1938, directing the respondent, The Falk Corporation, to cease and desist from dominating, interfering, and contributing to the support of the Independent Union of Falk Employees or any other organization of its employees, or interfering with the employees' right to self-organization and collective bargaining; and ordering the respondent to withdraw all recognition from the said Independent Union, and to post notices that it will cease and desist as aforesaid and withdraw recognition from the said Independent Union; and

Whereas this court on March 7, 1939, filed its opinion upholding the order of the Board,

It is hereby ordered that the Falk Corporation, respondent herein, cease and desist from (a) dominating or interfering with the formation or administration of the Independent Union of Falk Employees or of any other labor organization of its employees and from contributing financial or other support to said Independent Union or any other labor organization; (b) from interfering with, intimidating, restraining, coercing, or endeavoring to coerce, its employees in their right to form, join, or assist any labor organization or in exercising their right to freely and collectively bargain through representatives of their own choosing, or to freely engage in concerted activities for the purpose of collective bargaining.

It is further ordered that said respondent withdraw recognition of the Independent Union as the representative of all or any of its

employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages, or rates of pay, hours of employment, and other conditions of employment of labor; provided, however, that the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in labor relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union.

It is further ordered that the respondent shall post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating that the respondent will and does withdraw recognition of the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment, and that it has, and does, completely disestablish such labor organization as such representative, and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes.

It is further ordered that the respondent notify the Regional Director for the Twelfth Region in writing what steps it has taken to comply with this order, within forty days from the date of this order or in case application is made to the United States Supreme Court for a writ of certiorari, within thirty days from the date the Supreme Court affirms the decree or denies the writ, if it takes either action.

It is further ordered that this court, by this order, is not approving nor is it disapproving the direction of the National Labor Relations Board in reference to a coming or possible election by employees to choose their bargaining agency, and this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc.

TREANOR, Circuit Judge, concurring in part. I do not concur in that part of the mandate of this Court which purports to control the election which has been authorized by the Board. There is no requirement in the National Labor Relations Act that the Board use an election to determine the majority choice of bargaining agents; and the whole matter of providing a method for the determination of such choice is left in the sound discretion of the Board. Whether an election shall be used at all, or whether the name of one or more proposed bargaining agents shall be placed upon the ballot, must be determined by the Board in the light of the circumstances existing at the time when it becomes necessary for the Board to

officially recognize the existence of a bargaining agent. In the instant case two organizations were competing for the privilege of representing the employees as their bargaining agent. The National Labor Relations Board has found, and this Court has affirmed the finding, that one of the groups was being dominated unlawfully by the employer and while so dominated could not be recognized as a bargaining agent. The National Labor Relations Board ordered the disestablishment of that group as a bargaining agent and provided for an "election" to give the employees a chance to express their sentiments respecting the other organization.

I do not think that the action of the Board in providing for the election is before this Court; but if it were I cannot agree that it was an abuse of discretion on the part of the Board to place upon the ballot only the organization which was competing with the company union which the Board found was being dominated unlawfully by the employer. But since in my opinion no question relating to the proposed election has been presented to this Court, I do not think that this Court should commit itself either to an approval or disapproval of the Board's order providing for an election; nor do I believe that this Court has the power to control the discretion of the Board by a judicial declaration of a general administrative rule for future control of the Board in matters purely administrative.

A true Copy.
Teste.

Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

And on the same day, to-wit: On the thirteenth day of July 1939, the following further proceedings were had and entered of record, to-wit:

Thursday, July 13, 1939

Court met pursuant to adjournment

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER E. TREANOR, Circuit Judge

Petition for enforcement of order of the National Labor Relations Board

Whereas the National Labor Relations Board has petitioned this Court for an order enforcing its order entered April 18, 1938, direct-

ing the respondent, The Falk Corporation, to cease and desist from dominating, interfering and contributing to the support of the Independent Union of Falk Employees or any other organization of its employees, or interfering with the employees' right to self-organization and collective bargaining; and ordering the respondent to withdraw all recognition from the said Independent Union, and to post notices that it will cease and desist as aforesaid and withdraw recognition from the said Independent Union; and

Whereas this Court on March 7, 1939, filed its opinion upholding the order of the Board,

It is hereby ordered that the Falk Corporation, respondent herein, cease and desist from (a) dominating or interfering with the formation or administration of the Independent Union of Falk Employees or of any other labor organization of its employees and from contributing financial or other support to said Independent Union or any other labor organization; (b) from interfering with, intimidating, restraining, coercing, or endeavoring to coerce, its employees in their right to form, join, or assist any labor organization or in exercising their right to freely and collectively bargain through representatives of their own choosing, or to freely engage in concerted activities for the purpose of collective bargaining.

It is further ordered that said respondent withdraw recognition of the Independent Union as the representative of all or any of its employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages, or rates of pay, hours of employment, and other conditions of employment of labor; provided, however, that the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in labor relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union.

It is further ordered that the respondent shall post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating that the respondent will and does withdraw recognition of the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages or rate of pay, hours of employment, and other conditions of employment, and that it has, and does, completely disestablish such labor organization as such representative, and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes.

It is further ordered that the respondent notify the Regional Director for the Twelfth Region in writing what steps it has taken

to comply with this order, within forty days from the date of this order or in case application is made to the United States Supreme Court for a writ of certiorari, within thirty days from the date the Supreme Court affirms the decree or denies the writ, if it takes either action.

It is further ordered that this court, by this order, is not approving nor is it disapproving the direction of the National Labor Relations Board in reference to a coming or possible election by employees to choose their bargaining agency, and this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc.

And afterwards, to-wit: On the thirteenth day of September 1939, there was filed in the office of the Clerk of this Court, a Stipulation with reference to Exhibits to be transmitted to the Supreme Court, which said Stipulation is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

October Term 1938

January Session 1939

No. 6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Stipulation

It is hereby stipulated and agreed by and between the attorneys for the parties in the above entitled case, that in the printing of the transcript in connection with the petition for writ of certiorari, no exhibits be printed in addition to those already appearing in print in the printed transcript of record as used in the Circuit Court of Appeals for the Seventh Circuit.

It is further stipulated that the Clerk of the Circuit Court of Appeals may transmit all of the original exhibits to the Clerk of the United States Supreme Court; and that the original exhibits shall be deemed part of the record before the United States Supreme Court, and may be considered by the Court and referred to by the parties with the same force and effect as though all of the original exhibits had been printed in the printed record.

It is further stipulated that the certified copy of record furnished by the Clerk of the Circuit Court of Appeals for transmittal to the Clerk of the United States Supreme Court, with a statement by the

Clerk contained therein that the original exhibits have been transmitted to the Clerk of the United States Supreme Court, shall be considered by the parties hereto as having the same force and effect as though the certified copy of the record actually contained copies of each and every exhibit in the case.

It is further stipulated that service of a printed copy of the record, by the petitioner for the writ of certiorari upon the National Labor Relations Board, without having printed therein the exhibits omitted by this stipulation, shall have the same force and effect as though the printed record contained the omitted exhibits, printed in full.

Dated this 27th day of March 1939.

ROBERT W. WATTS,
Counsel for National Labor Relations Board,
Petitioner.

LEON B. LAMFROM,
A. J. ENGELHARD,
Counsel for The Falk Corporation,
Respondent.

[Endorsed:] Filed September 13, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the — day of September 1939, the following further proceedings were had and entered of record, to wit:

Friday, September 15, 1939

Court met pursuant to adjournment

6707

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE FALK CORPORATION, RESPONDENT

Before Hon. OTTO KERNER

Petition for enforcement of order of the National Labor Relations Board

It is ordered that the stipulation of counsel filed this day, concerning preparation and transmission of the record in this cause to the Supreme Court of the United States, be, and it is hereby, approved.

Pursuant to the Stipulation of counsel and the foregoing Order, the Exhibits referred to in said Stipulation are transmitted to the Supreme Court of the United States under a separate certificate.

United States Circuit Court of Appeals for the Seventh Circuit

I, FREDERICK G. CAMPBELL, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages, numbered from 1 to 33, inclusive, contain a true copy of the Notice and Petition for Intervention, Order granting leave to intervene, Order taking cause under advisement, Opinion filed March 7, 1939, Order granting petition for enforcement, Order taking the matter of the form of decree under advisement, Opinion on the form of decree, Decree, Stipulation as to exhibits for use on Petition for Certiorari and Order approving stipulation, in the following entitled cause: National Labor Relations Board, Petitioner vs. The Falk Corporation, Respondent, No. 6707, October Term, 1938, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of September A. D. 1939.

[SEAL]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Supreme Court of the United States

Order allowing certiorari

Filed November 13, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 253.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

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No. 460

In the Supreme Court of the United States

OCTOBER TERM, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE FALK CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE FALK CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Seventh Circuit, entered on July 13, 1939, in so far as that decree modified an order of the Board issued against respondent.

OPINIONS BELOW

The first opinion of the Circuit Court of Appeals (R. 1198) is reported in 102 F. 2d 383. The second opinion (R. 1208) is not yet reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1165–1180) are reported in 6 N. L. R. B. 654.

JURISDICTION

The decree of the Circuit Court of Appeals was entered July 13, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, in ruling upon a petition by the Board to enforce an order issued against respondent in an unfair labor practice proceeding under Section 10 of the National Labor Relations Act, the court below had jurisdiction so to modify the Section 10 order as to invalidate or modify a direction of election (not sought to be reviewed by either party) issued by the Board in a separate representation proceeding under Section 9 (c).

2. Whether, upon findings approved by the court below that respondent dominated and interfered with, and is dominating and interfering with a labor organization of its employees in violation of the Act, it was within the power of the Board (1) to require respondent to withdraw all recognition from and completely to disestablish that labor organization as a bargaining representative of its employees, and (2) in a separate representation proceeding to direct an election in which the disestablished organization was to be omitted from the ballot.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 *et seq.*) are set forth in the Appendix, *infra*, pp. 21–23.

STATEMENT

Pursuant to a charge and amended charge (R. 18–19, 20–21) filed by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528, a labor organization, the Board on August 4, 1937, pursuant to Section 10 (b) of the Act, issued its complaint and notice of hearing which were duly served upon respondent (R. 14–18). The complaint alleged, in substance, that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) of the Act. Respondent duly filed its answer (R. 21–25) denying that it had violated the Act.

At the same time that it filed the amended charge pursuant to Section 10 (b), the Amalgamated likewise filed a petition (R. 13–14) requesting the investigation of a question concerning the representation of respondent's employees asserted to have arisen under Section 9 (c). In this proceeding the Board ordered an investigation and authorized its Regional Director at Milwaukee, Wisconsin, to provide for an appropriate hearing upon notice (Bd. Ex. No. 1).[1]

[1] This exhibit, and Board Exhibit No. 2, referred to in the next paragraph, are not printed but are on file with the Clerk.

Thereafter, as permitted by its rules,[2] the Board ordered that the unfair labor practice proceeding against respondent under Section 10 and the representation proceeding under Section 9 (c) be consolidated for the purpose of hearing (Bd. Ex. No. 2). The consolidated hearing was held from August 16 to 25, 1937. The Board, respondent, the Independent Union of Falk Employees, and the International Union of Operating Engineers, Local 311, participated in the hearing by counsel (R. 26).[3]

On November 2, 1937, the Trial Examiner filed his Intermediate Report in the unfair labor practice proceeding (R. 1136–1152), finding that respondent had violated Section 8 (1), (2), and (3) of the Act.[4] Exceptions were filed by respondent (R. 1153–1161) and by the Independent (R. 1161–1164), and on February 25, 1938, they and the Operating Engineers appeared before the Board by

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[2] Article III, Sec. 10, Rules and Regulations of the National Labor Relations Board—Series 1, as amended, issued April 27, 1936. The Board's present rules, "Series 2," issued July 14, 1939, do not change the provision for consolidation.

[3] The Independent Union of Falk Employees, a labor organization alleged in the complaint to be dominated by respondent, and the International Union of Operating Engineers, Local 311, a labor organization claiming to represent some of respondent's employees, intervened (Bd. Exs. Nos. 6–9, R. 32, 33).

[4] The Trial Examiner found that respondent did not violate Section 8 (5) (R. 1147). The Board affirmed this action and likewise dismissed the Section 8 (3) allegations (R. 1181). The Board's order (R. 1165–1182) involves only Section 8 (1) and (2).

counsel and were heard in oral argument (R. 1165). Respondent and the Independent also filed briefs with the Board.

On April 18, 1938, the Board issued its Decision and Order in the unfair labor practice proceeding and its Decision and Direction of Election in the representation proceeding, in consolidated form (R. 1165–1182). The Board's findings of fact may be briefly summarized as follows:[5]

Respondent produces and sells steel castings and related products, and is extensively engaged in interstate commerce (R. 1170, Bd. Ex. No. 16). In 1933 a Works Council, a form of employee representation, was set up in the respondent's plant at the suggestion of Harold Falk, respondent's vice-president (R. 1171, 43, 45). The Council's chairman and secretary were appointed by respondent, the employees were warned by respondent's officers not to vote for "outsiders" as representatives, and votes cast for outside representatives were not counted (R. 1171, 179, 505, 551–552). The Works Council was continued for about 21 months after the National Labor Relations Act became effective, but in April, 1937, respondent and the Council decided that the latter would have to be disestablished because of the Act's provisions prohibiting company dominated labor organizations (R. 1171, 275). The

[5] In the following statement the first record reference is to the findings of the Board and the succeeding references are to the evidence supporting those findings.

Amalgamated and the Operating Engineers were at that time attempting to organize respondent's employees (R. 1174, 477, 557, 558, 639). Vice-President Falk, at the final meeting of the Works Council, announced that a scheduled general wage increase would be cancelled if an outside labor organization entered the plant (R. 1171–1172, 502, 837, 1007–1009), and suggested that the employees form an independent union as successor to the Works Council (R. 1171, 508–509). Respondent had long been hostile to nationally affiliated labor organizations (R. 1171–1172, 40, 50, 51, 63, 71, 75, 90, 91).

A number of employees who had been on the dissolved Works Council proceeded to carry out Falk's suggestion. Notices of the first meeting, on April 12, were delivered by respondent's personnel manager (R. 1172, 763, 213, 214, 215–220). At this meeting Falk agreed to advance the wage increase from June 1 to May 1, and the evidence indicates that this action was taken for the purpose of keeping employees from joining the Amalgamated by demonstrating the effectiveness of the "inside" organization (R. 1172, 510, 557, 813, 814, 829, 874, 950).

Respondent continued closely to supervise the formation of the Independent. Responsible officials of respondent attended a meeting of the Independent's organizers at which the details of organization were decided upon (R. 1172, 511, 560,

832, 850, 851, 891, 915). Vice-President Falk recommended an attorney (R. 1172–1173, 84, 85, 284), who advised the organizers as to the procedure to be followed for successful establishment of the Independent (R. 1173–1174, 345–350, 563). The organization meetings were held on respondent's property during working hours (R. 1172, 258, 931).* On April 23 respondent recognized the Independent as the sole collective bargaining agency for all of its employees, without requesting or receiving any proof that the Independent represented a majority (R. 1174, 860, 892, 894, 1091, 1092).

Throughout this period, respondent exerted intensive efforts to keep its employees out of the Amalgamated and the Operating Engineers. Vice President Falk, by coercive conversations with the employees, destroyed the Operating Engineers' majority representation among the powerhouse employees (R. 1174–1175, 638, 641, 159, 140–146, 1090, 75, 148, 641, 642–644). The supervisory staff engaged in widespread intimidation against the Amalgamated and in favor of the Independent (R. 1174, 103, 237–239, 241, 255–257, 478, 479, 480, 685–686).

* The organizers were at first paid for the time spent in organizational activities (R. 258, 301, 931), but later, after the Independent had been recognized as sole bargaining representative, the payments were deducted from their pay upon the advice of counsel (R. 930, 958).

Upon these facts the Board found that respondent by coercing its employees in the exercise of their right to self-organization and by dominating and interfering with the formation and administration of the Independent and by contributing support to it, had violated and was violating Section 8 (1) and (2) of the Act (R. 1179–1180). The Board ordered respondent to cease and desist from these unfair labor practices, to withdraw all recognition from the Independent as a representative of any of its employees for the purposes of collective bargaining and completely to disestablish the Independent as such representative, and to post appropriate notices (R. 1180–1181).

In the representation proceeding, the Board found that a question had arisen concerning the representation of respondent's employees (R. 1178). The Board directed that, as part of the investigation to ascertain representatives for collective bargaining, an election be held, upon further order of the Board "after we are satisfied that the effects of respondent's unfair labor practices have been dissipated by compliance with this order"; and that the Amalgamated and the Operating Engineers, but not the Independent, appear on the ballots (R. 1178, 1181–1182).

On June 30, 1938, the Board filed in the court below, pursuant to Section 10 (e), its petition for enforcement of the order in the unfair labor practice proceeding (R. 1–5). On March 7, 1939, the court handed down an opinion (R. 1198) holding

that the Board's findings of fact were supported by the evidence, and concluding that "the order of the Board is valid and that its petition for enforcement should be, and is hereby, granted" (R. 1206). On the same day the court entered an order for enforcement (R. 1207).

Thereafter the court submitted to the parties a proposed decree (R. 1210–1211, 1212–1214), which modified the Board's order in substantial respects. The Board filed objections and a supporting memorandum, but on July 13, 1939, a majority of the court, after a hearing, adopted and entered the proposed decree (R. 1212–1214). In addition to requiring that respondent cease and desist from its violations of Section 8 (1) and (2) of the Act, the decree provides as follows (R. 1210–1211, 1213–1214), the italicized matter representing the important provisions added to the Board's order (R. 1181–1182):

> IT IS FURTHER ORDERED that said respondent withdraw recognition of the Independent Union as the representative of all or any of its employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment of labor; *provided, however, that the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in*

labor-relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union.

IT IS FURTHER ORDERED that the respondent shall post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating that the respondent will and does withdraw recognition of the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment, and that it has, and does, completely disestablish such labor organization as such representative, *and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes.*

* * * * *

It is further ordered, That this court, by this order, is not approving nor is it disapproving the direction of the National Labor Relations Board in reference to a coming or possible election by employees to choose their bargaining agency, and this order is not to be construed as approving any fu-

ture action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc.[1]

Judge Treanor, concurring in part, expressed the opinion that the direction of election was not before the court and that, if it were, the Board had not abused its discretion in omitting the Independent from the ballot (R. 1211–1212).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that it had jurisdiction so to modify the Board's order under Section 10 as to invalidate or modify the direction of election which the Board had issued under Section 9 (c).

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[1] The additional modifications were these: (1) The first paragraph quoted *supra* omitted the Board's requirement that respondent disestablish the Independent (R. 1180), although the court did order respondent to post notices that it "has, and does," disestablish the Independent. (2) The notices provision as enforced by the court (second paragraph, *supra*) omits the requirement contained in the Board's order that the notices state "that the respondent will cease and desist" from the practices forbidden by the cease-and-desist portion of the order (R. 1181), although the court had expressly upheld the validity of that provision over objection by respondent (R. 1205). While the omission of this provision is not relied on as a reason for granting the writ, the Board asks that the Court review it if this petition is granted.

2. In holding that the Board had acted unlawfully in directing an election to be held omitting the Independent from the ballot.

3. In providing in its order that respondent's employees shall remain free to choose the Independent as their bargaining agency at any future election held pursuant to the Act.

4. In omitting from its order the provision of the Board's order that the notices posted by respondent include a statement that the respondent "will cease and desist" from the practices forbidden by the cease and desist portion of the order.

5. In refusing to enforce the affirmative provisions of the Board's order as issued by the Board.

REASONS FOR GRANTING THE WRIT

1. The court below declined to grant full enforcement of the Board's establishment order. Had it done merely that, the only question presented would be whether the disestablishment order represented an abuse of the Board's discretion. But the decision below is not so confined. The second opinion declares (R. 1209) that the court is passing upon the "coming election" and that there is "before us for final disposition the matter of the selection of the bargaining agent." That opinion deals directly and well-nigh exclusively with the election which the Board had directed in the representation proceeding under Section 9 (c). The decree leaves no doubt that the Board's direction of election is reviewed and modified. It provides (R. 1211, 1213):

> * * * the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the National Labor Relations Act, the Independent Union to represent them in labor relation dealings with respondent; * * *

The court below stated (R. 1209) that it would not act if there were before it only a direction of election, but apparently thought that its jurisdiction was extended over the direction of election because the Section 10 order, and especially its disestablishment provisions, were before it. The question whether the Act confers jurisdiction upon the circuit courts of appeals to review directions of election, standing alone, is now before this Court in *National Labor Relations Board* v. *International Brotherhood of Electrical Workers*, 105 F. (2d) 598 (C. C. A. 6th), certiorari granted, October 9, 1939, No. 253, this Term. In that case it was held that the courts have such jurisdiction; in several other cases the contrary has been held.[8] There is also now before the Court, in *American Federation of Labor* v.

[8] *Cupples Company Manuf'rs* v. *National Labor Relations Board*, 103 F (2d) 953, 955 (C. C. A. 8th); *Unlicensed Employees of Sabine Transportation Co.* v. *National Labor Relations Board*, decided November 12, 1937 (C. C. A. 5th) (reported in C. C. H., Labor Law Service, p. 16040). In two earlier cases the court below had dismissed petitions to review directions of elections. *New York Handkerchief Co.* v. *National Labor Relations Board*, 97 F. (2d) 1010; Armour & Co. v. *National Labor Relations Board*, 105 F. (2d) 1016.

National Labor Relations Board, 103 F. (2d) 933, certiorari granted, October 9, 1939, No. 70, this Term, the question whether the circuit courts of appeals have jurisdiction to review certifications issued by the Board. In that case, and also in *United Employees Association* v. *National Labor Relations Board,* 96 F. (2d) 875 (C. C. A. 3d), the courts held that they did not.* Since these aspects of the question of the jurisdiction of the courts to review directions of elections and certifications of the Board are already before the Court, it seems plainly desirable that the petition be granted in this case so that the additional facet of the question here presented can be considered and determined.

That any judicial review of a direction of election or a certification of the Board (except as provided in Section 9 (d) of the Act, discussed in footnote 11, *infra,* p. 15), is contrary both to the terms of the Act and its meaning as disclosed by its legislative history has been shown in the petition for certiorari filed in behalf of the Board in *National Labor Relations Board* v. *International Brotherhood of Electrical Workers,* No. 253, this Term, and in the Government's memorandum in *American Federation of Labor* v. *National Labor*

* If a certification—the final step in a representation proceeding—is not reviewable, a direction of election, which is a preliminary direction of the Board to its own subordinate officials to take certain proceedings as part of the investigation concerning representation, is, *a fortiori*, not reviewable.

Relations Board, No. 70, this Term, to which the Court is respectfully referred. And the lack of jurisdiction in the present case is even clearer than in those cases and the others cited above. In each of those cases a petition was filed in the court of appeals seeking to set aside the direction of election or certification. Here the Board's petition sought only enforcement of its order in the unfair labor practice proceeding (R. 1180–1181). It did not seek enforcement of its direction of election (R. 1–5) and could not have done so.[10] Nor did respondent's answer to the enforcement petition seek to enlarge the issues; it merely denied that the order sought to be enforced was valid and prayed that enforcement be denied (R. 6). Hence, a statutory prerequisite to any jurisdiction over the representation proceeding—the filing of a petition—was plainly lacking.[11]

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[10] Section 10 (e) is limited to proceedings to enforce unfair labor practice orders issued under Section 10 (c); moreover, the Board could not have sought "enforcement" of the direction of election against respondent, since the direction did not purport to require respondent, or any one other than the Board's Regional Director, to take or refrain from taking any action.

[11] Section 9 (d) of the Act (*infra*, p. 22) clearly did not apply. That section permits a review of "facts certified" in a representation proceeding under Section 9 (c) when the certification forms a basis for a subsequent order issued under Section 10 (c) in an unfair labor practice case, *e. g.*, where an order to bargain collectively is predicated in part upon a prior certification of the complaining union as the

2. Laying aside the question of the lower court's jurisdiction to review the representation proceeding, its refusal to grant full enforcement of the disestablishment order after sustaining the Board's findings of domination, interference, and support of the Independent by respondent, and its order that the Independent be placed on the ballot in any election to determine employee representation, are in conflict with the applicable decisons of this Court, and are an improper interference with the discretion conferred by the Act upon the Board in protecting rights guaranteed employees by the Act.

The court below, while it ordered respondent to withdraw recognition of the Independent as the representative of its employees for collective bargaining, and to post notices to that effect and that it had disestablished the Independent as such representative, also ordered that the employees remain free at the coming election to choose the Independent as their representative, and that the notices to be posted by respondent state that it would not recognize the Independent unless the employees thereafter selected it as their representative. And the order furfher provided that (R. 1214):

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exclusive representative. In the present case no facts have been certified in the representation proceeding, it and the unfair labor practice case were independent, although they were, for convenience, tried together and decided simultaneously by the Board, and the Board's order in the unfair labor practice case was not based in any way upon the direction of election.

> this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining * * *.

The court below thus took the position that an election at which the company-dominated union was rejected was a prerequisite to disestablishment of that union, or, perhaps, that it was within the court's discretion to require such a prerequisite. The same view was taken by the Third and Ninth Circuits in the *Greyhound* cases, but was rejected by this Court in reversing their decisions. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 264, 268; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272. The decision below is in conflict with those decisions. It presents, moreover, the same general question in substance that is before the Court in *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Company*, No. 20, this Term, in which enforcement of a disestablishment order was denied by the Circuit Court of Appeals for the Fourth Circuit.

A cease and desist order can prevent future acts of domination, interference, and support in violation of Section 8 (2), but it cannot wholly eliminate the continuing effect of past interference with the employees' free choice of their bargaining representatives. As said by the Board in the *Pacific*

Greyhound Lines case, a cease and desist order "would not set free the employee's impulse to seek the organization which would most effectively represent him" (303 U. S. at 275). It is the purpose of the affirmative disestablishment order to meet this need: to remove, by severing the ties of recognition and bargaining, the barrier to free choice erected by the employer.

The Board, having found that respondent had violated Section 8 (1) and (2) of the Act, was authorized by Section 10 (c) of the Act to require, in addition to the cessation of such practices, such affirmative relief as it found would effectuate the policies of the Act. In the exercise of that authority it concluded that respondent should withdraw recognition from and disestablish the Independent as the representative of its employees for collective bargaining. From that conclusion the Board's direction in the representation case that the Independent should be omitted from the ballot in the election obviously followed. No question exists as to the power of the Board to order full disestablishment. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 268; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240. See also *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 236. And no question exists as to the scope of review: the Board was authorized by Congress to draw the inference of fact

whether the Independent would be a continuing obstacle to the full and free exercise of the employees' rights to choose their own representatives for collective bargaining, and to decide what affirmative action would effectuate the policies of the Act. Its determination was conclusive if there is evidence to support it. *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275. Here the court below found that the evidence "rather conclusively points to the findings made by the Board" (R. 1205). In substituting its own judgment for that of the Board as to the appropriate remedy the court below plainly overstepped its reviewing functions, as delimited by the Act and by the decisions of this Court.

This question is one of great importance. Elimination of the company dominated union was one of the chief objects of Congress. Disestablishment was expressly contemplated as the normal method. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261. It has been the Board's policy to order disestablishment of company dominated or interfered with organizations, and to deny them a place upon the ballot in a representation proceeding. *Third Annual Report of the National Labor Relations Board* (G. P. O. 1939), pp. 144, 197–198. Frequently these steps are taken simultaneously, after a consolidated hearing, as in this case, upon a petition in a representation proceeding and a complaint in

an unfair labor practice case alleging that the employer has violated Section 8 (2) of the Act. This practice is plainly in accord with the Congressional intention. The contrary action taken by the court below would defeat proper and effective administration of the Act, as regards both its representation and unfair labor practice provisions.[12]

CONCLUSION

For the foregoing reasons we respectfully submit that this petition for a writ of certiorari should be granted.

ROBERT H. JACKSON,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

OCTOBER 1939.

[12] In a similar decision the Circuit Court of Appeals for the First Circuit recently held that a disestablishment order should not be enforced and that, instead, the Board "should order an election" with the company dominated union upon the ballot. *National Labor Relations Board* v. *Bradford Dyeing Association*, decided August 2, 1939.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 *et seq.*) are as follows:

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * * *

SEC. 9. * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SEC. 10. * * *

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all

the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * *

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No. 460

In the Supreme Court of the United States

OCTOBER TERM, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE FALK CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 450

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE FALK CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The first opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 1198) is reported in 102 F. (2d) 383, and the second opinion (R. 1208) in 106 F. (2d) 454. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1165–1181) are reported in 6 N. L. R. B. 654.

JURISDICTION

The decree of the Circuit Court of Appeals was entered July 13, 1939. The petition for a writ of

certiorari was filed October 12, 1939, and was granted November 13, 1939. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, in ruling upon a petition by the National Labor Relations Board to enforce an order issued by the Board against respondent in an unfair labor practice proceeding under Section 10 of the National Labor Relations Act, the court below had jurisdiction so to modify the Section 10 order as to invalidate or modify a direction of election (not sought to be reviewed by either party) issued by the Board in a separate representation proceeding under Section 9 (c).

2. Whether, upon findings approved by the court below that respondent dominated and interfered with, and is dominating and interfering with, a labor organization of its employees in violation of the Act, it was within the power of the Board (1) to require respondent to withdraw all recognition from and completely to disestablish that labor organization as a bargaining representative of its employees, and (2) in a separate representation proceeding to direct an election in which the disestablished organization was to be omitted from the ballot.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 151 *et seq.*) are set forth in the Appendix.

STATEMENT

Pursuant to a charge and amended charge (R. 18–19, 20–21) filed by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528, a labor organization, the Board on August 4, 1937, pursuant to Section 10 (b) of the Act, issued its complaint and notice of hearing, which were duly served upon respondent (R. 14–18). The complaint alleged, in substance, that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3) and (5) of the Act. Respondent duly filed its answer (R. 21–25) denying that it had violated the Act.

At the same time that it filed the amended charge under Section 10 (b), the Amalgamated likewise filed a petition (R. 13–14) requesting the investigation of a question concerning the representation of respondent's employees asserted to have arisen under Section 9 (c). In this proceeding the Board ordered an investigation and authorized its Regional Director at Milwaukee, Wisconsin, to provide for an appropriate hearing upon notice (Bd. Ex. No. 1).[1]

[1] This exhibit and Board Exhibit No. 2, hereinafter referred to, are not printed but are on file with the Clerk.

Thereafter, as permited by its rules,[2] the Board ordered that the unfair labor practice proceeding against respondent under Section 10 and the representation proceeding under Section 9 (c) be consolidated for the purpose of hearing (Bd. Ex. No. 2). The consolidated hearing was held from August 16 to 25, 1937. The Board, respondent, the Independent Union of Falk Employees, and the International Union of Operating Engineers, Local 311, participated in the hearing by counsel (R. 26).[3]

On November 2, 1937, the Trial Examiner filed his Intermediate Report in the unfair labor practice proceeding (R. 1136–1152), finding that respondent had violated Section 8 (1), (2) and (3) of the Act.[4] Exceptions were filed by respondent (R. 1153–1161) and by the Independent (R. 1161–

[2] Article III, Sec. 10, Rules and Regulations of the National Labor Relations Board—Series 1, as amended, issued April 27, 1936. The Board's present rules, "Series 2," issued July 14, 1939, do not change the provision for consolidation.

[3] The Independent Union of Falk Employees, a labor organization alleged in the complaint to be dominated by respondent, and the International Union of Operating Engineers, Local 311, a labor organization claiming to represent some of respondent's employees, intervened (Bd. Exs. Nos. 6–9, R. 32, 33).

[4] The Trial Examiner found that respondent did not violate Section 8 (5) (R. 1147). The Board affirmed this action and likewise dismissed the Section 8 (3) allegations (R. 1181). The Board's order (R. 1180–1181) involves only Section 8 (1) and (2).

1164), and on February 25, 1938, they and the Operating Engineers appeared before the Board by counsel and were heard in oral argument (R. 1165). Respondent and the Independent also filed briefs with the Board.

On April 18, 1938, the Board issued its Decision and Order in the unfair labor practice proceeding and its Decision and Direction of Election in the representation proceeding in consolidated form (R. 1165–1182). The Board's findings of fact may be briefly summarized as follows:[5]

Respondent produces and sells steel casings and related products, and is extensively engaged in interstate commerce (R. 1170; Dd. Exh. 16). (No question concerning the Board's jurisdiction is present here.) In 1933, a form of employee representation known as the Works Council was established at respondent's plant upon the advice of Harold Falk, respondent's vice president and works manager, who also warned the employees that it would be "inadvisable" for them to select an "outside union" as their representative (R. 1171, 43, 45). The Council, which continued for about 21 months after the Act became effective, was indisputably a company union. It was administered jointly by representatives elected by the employees and those designated by the management, and the superintendent of respondent's machine shop was its chairman (R. 1171, 45–46, 179). Re-

[5] In the following statement the first record reference is to the findings of the Board and the succeeding references are to the evidence supporting those findings.

spondent's officers interfered with its elections to the extent of warning the employees not to vote for "outsiders," and votes cast in defiance of these instructions were disregarded (R. 1171, 505, 551–552). The meetings were held on company time and property and the employee representatives were paid for time spent at such meetings (R. 1171–1172, 161).

Respondent's high officials had an emphatic preference for "inside" labor organizations (R. 1175, 49, 90, 91, 97) and a decided antipathy to unions with national affiliations (R. 1171–1172, 1175, 40, 50, 51, 63, 71, 75). When respondent decided in April 1937 that the Works Council was illegal and the representatives were informed that it must be disbanded (R. 1171, 275, 306), Harold Falk clearly indicated to the representatives that they were expected to form a new unaffiliated organization (R. 1171, 508–509, 532). At the same time, Falk gave permission to hold a later meeting of all past and present Works Council representatives on respondent's premises (R. 1171, 510, 753, 810, 839). The Amalgamated and the Operating Engineers were then engaged in attempting to organize respondent's employees, to the "disappointment" of Falk (R. 1174, 477, 557, 558, 639, 942, 1014).

A number of the representatives on the company-dominated Works Council proceeded to form the Independent, thus carrying out Falk's desire that they form a new inside organization. Respondent's personnel manager delivered notices of the

first meeting, held on April 12; he regarded this function as "business connected with the company" (R. 1172, 213–220, 762–763).[6] The meeting was held on company property during working hours and those who attended were paid by respondent for the time spent at that meeting, as well as at later meetings (R. 1172, 258, 301, 929–931).[7] Falk accepted an invitation to attend and advised the representatives that they had a right to form their own union (R. 1172, 279–280, 756, 946). Falk had previously announced, at the meeting where the dissolution of the Works Council was proclaimed to the representatives, that there would be a general wage increase on June 1 if no outside union intervened (R. 1171, 507, 837, 1007–1009). Someone suggested at the April 12 meeting that if the date of the wage increase were advanced it would keep the employees from joining the Amalgamated; Falk immediately advanced the increase to May 1 (R. 1172, 510, 557, 813–814, 829, 874, 950, 265).

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[6] Company messengers also delivered notices of the meeting to foremen, who passed them on to the selected employees (R. 220, 217). The foreman of the foundry, knowing the purpose of the meeting, appointed two employees to attend (R. 257–258).

[7] After the Independent had been successfully organized and had been recognized by respondent as the employees' exclusive bargaining representative, these payments were deducted from the organizers' wages upon advice to respondent by its counsel that the payments were of doubtful legality (R. 258, 350, 351, 892, 930, 1091, 1092).

The details of organization of the Independent were likewise arranged under respondent's supervision. Responsible officials of respondent addressed a meeting at which the details were considered and gave plentiful advice (R. 1172, 511, 560, 891, 915). Falk urged haste in formation of the new organization and insisted that it be incorporated (R. 1172, 511–512, 611, 612, 835, 1012–1013). An attorney was deemed necessary (R. 1172, 321, 877); upon request, Falk recommended a few and made an appointment with one for a committee of the men (R. 1172–1173, 80, 84–85, 284, 321–322).[4] Under the guidance of this attorney, the Independent was incorporated in accordance with Falk's demand, although incorporation had been rejected both by the committee of organizers and by the rank and file at the first organizational meeting (R. 1173–1174, 350–353, 859–860).

Respondent precipitately accorded the Independent exclusive recognition. On April 20, the Independent guardedly claimed 400 members out of the 1,500 employees (R. 1174, 1092, 860); yet 3 days later respondent recognized it as the exclusive bargaining agency in the plant without requesting or receiving any proof of majority repre-

[4] The organizers attempted to conceal from the other employees the manner in which Burke, the attorney, was engaged (R. 1173, 561, 328).

sentation (R. 1174, 860, 892, 894, 1091, 1092).[9] However, respondent set out to build up a majority for the Independent by a campaign of coercion directed against the two "outside" unions and in favor of the Independent. On company time and property high supervisory employees bitterly disparaged the Amalgamated and compared it unfavorably with the Independent; at least one even openly solicited on behalf of the Independent (R. 1174, 688, 689, 691, 237–241, 478–480, 485, 255–257, 260, 103, 904, 906, 685–686). And Falk, through a series of grossly coercive interviews with the powerhouse employees, effectively destroyed the majority there claimed by the Operating Engineers (R. 1174–1175, 638, 641, 159, 140–146, 1090, 75, 148, 641, 642–644, 654–655).

The evidence thus established that, after maintaining the Works Council until April 1937, respondent abandoned that method of denying to its employees freedom of choice of collective bargain-

[9] Respondent's alacrity to recognize the Independent contrasts sharply with Falk's response to a request by the Operating Engineers for bargaining rights. On April 12, when the Independent was first being launched, the Operating Engineers claimed signed membership cards from 14 of the 17 powerhouse employees; Falk first demanded a list of the members (R. 660, 641) and then called the men in to canvass their desires (R. 140, 144). Falk then refused to recognize the Engineers, informing the employees by letter that "We are not in favor of a union" (R. 146, 1090, 1091).

ing representives only to substitute another method no less effective. The Independent's existence is entirely ascribable to respondent's initiative. Having caused the Independent to be established, respondent led the employees, by bribes, threats, and illegal use of the powerful weapon of recognition, away from the *bona fide* labor unions and into the Independent.

These facts fully support the Board's findings (R. 1179–1180) that respondent dominated and interfered with the formation of the Association, was dominating and interfering with its administration, and was contributing support to it, in violation of Section 8 (2) and (1) of the Act. The Board ordered respondent to cease and desist from these unfair labor practices, to withdraw recognition from the Independent as a representative of any of its employees for purposes of collective bargaining, completely to disestablish the Independent as such representative, and to post appropriate notices (R. 1180–1181).

In the representation proceeding under Section 9, the Board found that a question had arisen concerning the representation of respondent's employees (R. 1178). The Board directed that, as part of the investigation to ascertain representatives for collective bargaining, an election be held, upon further order of the Board "after we are satisfied that the effects of respondent's unfair labor practices have been dissipated by compliance with this order"; and that the Amalgamated and the Operat-

ing Engineers, but not the Independent, appear on the ballot (R. 1178, 1181–1182).

On June 30, 1938, the Board filed in the court below, pursuant to Section 10 (e), its petition for enforcement of the order in the unfair labor practice proceeding (R. 1–5). On March 7, 1939, the court handed down an opinion (R. 1198) holding that the Board's findings of fact were supported by the evidence, and concluding that "the order of the Board is valid and that its petition for enforcement should be, and is hereby, granted" (R. 1206). On the same day the court entered an order for enforcement (R. 1207).

Thereafter the court submitted to the parties a proposed decree which modified the Board's order in substantial respects. The Board filed objections and a supporting memorandum, but on July 13, 1939, a majority of the court, after oral argument, adopted and entered the proposed decree (R. 1210–1211, 1212–1214). In addition to requiring that respondent cease and desist from its violations of Section 8 (1) and (2) of the Act, the decree provides as follows (R. 1210–1211, 1213–1214), the italicized matter representing the important provisions added to the Board's order (R. 1181–1182):

> It is further ordered that said respondent withdraw recognition of the Independent Union as the representative of all or any of its employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of em-

ployment of labor; *provided, however, that the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in labor-relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union.*

It is further ordered that the respondent shall post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating that the respondent will and does withdraw recognition of the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages or rates of pay, hours of employment and other conditions of employment, and that it has, and does, completely disestablish such labor organization as such representative, *and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes.*

* * * * *

It is further ordered that this court, by this order, is not approving, nor is it disap-

proving the direction of the National Labor Relations Board in reference to a coming or possible election by employees to choose their bargaining agency, and this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that it had jurisdiction so to modify the Board's order under Section 10 as to invalidate or modify the direction of election which the Board had issued under Section 9 (c).

2. In holding that the Board had acted unlawfully in directing an election to be held omitting the Independent from the ballot.

3. In providing in its order that respondent's employees shall remain free to choose the Independent as their bargaining agency at any future election held pursuant to the Act.

4. In omitting from its order the provision of the Board's order that the notices posted by respondent include a statement that the respondent "will cease and desist" from the practices forbidden by the cease and desist portion of the order.

5. In refusing to enforce the affirmative provisions of the Board's order as issued by the Board.[10]

SUMMARY OF ARGUMENT

I

The court below had no jurisdiction to review the Board's direction of election or to order that in any election held under the Act the employees shall be free to choose the Independent. The question whether the circuit courts of appeal have jurisdiction to review representation proceedings is before the Court in *National Labor Relations Board* v. *International Brotherhood of Electrical Workers*, No. 253, this Term, and in *American Federation of Labor* v. *National Labor Relations Board*, No. 70, this Term, and we show in our briefs in those cases that directions of elections are not reviewable at all, and that only a certification, the last step in a

[10] It will be noted that the provision of the decree requiring the posting of notices (second paragraph, *supra*) omits the requirement contained in the Board's order that the notices state "that the respondent will cease and desist" from the practices forbidden by the cease and desist portion of the order (R. 1181), although the court had expressly upheld the validity of that provision over objection by respondent (R. 1205–1206). We do not think it necessary to argue the validity of the notices provision, which is in the form repeatedly enforced by this Court, but the omission should be corrected. Another modification for which no reason appears is the omission, from the first paragraph of the decree quoted *supra*, of the requirement (R. 1180) that respondent disestablish the Independent; that paragraph of the decree merely requires withdrawal of recognition from the Independent. This omission, too, should be corrected.

representation proceeding, can be reviewed, and then only as provided in Section 9 (d) of the Act. That section affords review only when an order in an unfair labor practice proceeding is based upon facts certified in a representation proceeding. Here the representation proceeding merely reached the stage of a direction of election, and there was no certification. Accordingly, Section 9 (d) is inapplicable.

That the court below did review the direction of election is plain from the necessary effect of its decree and from the intent stated in its opinion that its decree control the conduct of the election. But, even if the provisions of the decree concerning the conduct of the election could be construed as merely a condition upon enforcement of the Board's order in the unfair labor practice case, rather than as a modification of the direction of election, the court was without power so to condition its relief as to infringe upon the Board's discretionary and purely administrative power to conduct the election. *Ford Motor Co.* v. *National Labor Relations Board*, 305 U. S. 364, 373.

II

The court should have granted full enforcement to the provisions of the Board's order requiring respondent to withdraw recognition from and completely to disestablish the company dominated Independent as a bargaining representative of the employees. The importance of the company union as a means of denying to employees freedom to

choose their own bargaining representatives is apparent from labor relations history and was noted by this Court in *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515. The legislative history of the National Labor Relations Act shows that Congress was greatly concerned with the company dominated union and intended to eliminate that impediment to genuine collective bargaining. The simple and effective remedy of disestablishing the company dominated organization as a bargaining representative, founded upon the decision of this Court in *Texas and New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, was adopted by the Board, following established administrative precedent, and was approved by this Court in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272; and *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

The instant case is a critical one in that it presents squarely the question whether the efficacy of the disestablishment remedy is to be maintained or whether that remedy is to be subjected to vitiating modifications by the circuit courts of appeals. The court below approved the Board's findings that the Independent was a company dominated labor organization, yet it modified the disestablishment order by providing that the Independent be made eligible for selection as a bargaining representative at any election thereafter to be conducted

among the employees by the Board. The modification was improper.

A. The Board has power to require the permanent disestablishment of a company-dominated labor organization. (1) The Independent is inevitably and permanently identified in the minds of the employees with respondent, which brought it into existence and established it as the employees' bargaining representative. An election in which the Independent appears upon the ballot will accordingly not permit a free choice by the employees uninfluenced by respondent. The temporary period of nonrecognition required by the court's decree cannot serve to terminate this situation. Even if respondent and the Independent will some day be disassociated in the minds of the employees, there is no practicable means of ascertaining when this has occurred. (2) The permanent disestablishment of employer-dominated labor organizations is necessary in order to avoid facilitating evasion of the Board's cease and desist orders. Continued domination and control of the old organizations can be more easily accomplished and is more difficult to detect than domination of a new organization. (3) No real restriction of the employees' choice is accomplished by permanent disestablishment of the Independent. Not only is it doubtful that any employees would freely choose the Independent, but, if so the restriction is in any event not a serious one since the employees are left free to create a new organization identical with the

old save for the exclusion of employer domination. If there is any restriction, it is outweighed by the probability that continuation of the Independent will materially interfere with the freedom of choice of all the employees. The company union device should not be resurrected because of a fancied or minor restriction upon a supposed group of employees.

B. Even if the Board lacks power to require permanent disestablishment, upon the theory that there is an ascertainable point at which the interference worked by respondent's violations of the Act would no longer influence the employees in any respect, the conditions imposed by the court are nevertheless improper. (1) The court could not assume that that point would be reached prior to the election ordered by the Board, so that the Independent could appear on the ballot without unfairly influencing the employees' choice. A considerable period, at least, would have to elapse before the point could be reached; it was not an abuse of discretion for the Board to determine that the employees should not be denied all opportunity to select a bargaining representative in the meantime. (2) The fragmentary disestablishment ordered by the court below cannot serve to recreate the freedom of choice which respondent destroyed and restoration of which the court must have assumed to accomplish in modifying the direction of election. The remedy does not bring home to the employees that the company dominated Independ-

ent is not a fit medium for collective bargaining and is not entitled to recognition as a free representative of employees. The employer is merely directed to forego all bargaining until the employees have vetoed for or against his choice.

The Court's modification of the simple and effective disestablishment remedy threatens to substitute for a clear principle of administration criteria which are not susceptible of orderly application. The Board's remedy in the present case did not constitute an abuse of discretion and the disestablishment order should have been enforced by the court below. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.

ARGUMENT

I

THE COURT BELOW HAD NO JURISDICTION TO REVIEW THE DIRECTION OF ELECTION OR TO ORDER THAT IN ANY ELECTION HELD UNDER THE ACT THE EMPLOYEES SHALL BE FREE TO CHOOSE THE INDEPENDENT UNION

The issues presented to the court below by the Board's petition for enforcement (R. 1–5) and respondent's answer (R. 6) were limited to the validity of the Board's order in the unfair labor practice proceeding under Section 10 and to the propriety of enforcing that order. The court confined its original opinion and decision (R. 1198–1206) to a determination of those issues, sustained the Board's findings and order and granted the petition for enforcement. In its subsequent opinion

(R. 1208–1212), however, the court reviewed the Board's direction of election in the representation proceeding under Section 9 (c), and its decree (R. 1212–1214), in addition to modifying the Board's order under Section 10 (*infra*, pp. 29–51), in effect modifies the direction of election and controls the Board's conduct of any future election.

We show under Point II that the court erred in modifying the Board's order under Section 10, and that, even if it had jurisdiction to do so, it should not have disturbed the direction of election. Here we submit that the court had no jurisdiction to review the direction of election or to enter its decree in regard to the conduct of the election or of any future election.

The pertinent provision of the court's decree is as follows, the italics being ours (R. 1213):

> It is further ordered that said respondent withdraw recognition of the Independent Union as the representative of * * * any of its employees * * *; *provided, however, that the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them* * * *.

Although this provision is in form a part of the order modifying and enforcing the Board's order under Section 10, it is in substance a modification of the Board's direction of election, which provided

for a form of ballot that would not permit a vote for the Independent.[11] It is designed, moreover, to control the Board's conduct of any future election. So viewed, it is plainly void for lack of jurisdiction.

The question whether the circuit courts of appeals have jurisdiction to review a direction of election is before the Court in *National Labor Relations Board* v. *International Brotherhood of Electrical Workers,* No. 253, this Term. In our brief in that case, and also in our brief in *American Federation of Labor* v. *National Labor Relations Board,* No. 70, this Term, we show that the Act does not provide for a review of representation proceedings

[11] The intervenor's brief in opposition to the petition for certiorari argued (pp. 4, 5) that the direction of election did not "preclude the Independent from appearing on the ballot." However, in discussing the election it would direct, the Board said (R. 1179), in a portion of its decision which dealt with the representation proceeding: "In such election we shall make no provision for the designation of the Independent on the ballot." And the direction of election plainly excludes the Independent in providing (R. 1181–1182) for an election "(1) among the employees * * * exclusive of * * * powerhouse employees, and steam-driven locomotive crane operators * * * to determine whether or not they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528 * * * (2) among the powerhouse employees and steam-driven locomotive crane operators * * * to determine whether they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528 * * * or by International Union of Operating Engineers, Local 311 * * * or by neither."

under Section 9, but indeed that Section 9 (d) precludes review of them, except in the single situation there provided where "facts certified" under Section 9 (c) are a basis for an order issued by the Board in an unfair labor practice case under Section 10 and that order is sought to be enforced or reviewed pursuant to Section 10 (e) or (f). Since the same showing is applicable to the question of jurisdiction in the instant case, we respectfully refer the Court to our briefs in those cases.[12]

Respondent and the intervenor contended in their briefs in opposition to the petition for certiorari, at pages 3–4 and 6, respectively, that the court below had jurisdiction under Section 9 (d) to review the direction of election, since the representation proceeding had been consolidated with the unfair labor practice proceeding for purposes of hearing before the Board (Bd. Ex. No. 2). But this contention cannot stand. Section 9 (d) provides:

> (d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon *facts certified* following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, *such certification* and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon

[12] Copies of these briefs are being served upon the attorneys for the respondent and intervenor herein, respectively.

> the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript. [Italics supplied.]

In the instant case there were no "facts certified" in the representation proceeding; there was only a direction of an election to determine whether or not there should be a certification of representatives. Consequently, Section 9 (d) did not grant jurisdiction to the court below as contended.

The fact that the representation and unfair labor practice proceedings were consolidated as a matter of convenience for purposes of hearing before the Board, as permitted by Section 9 (c), cannot enlarge the express scope of Section 9 (d) and is therefore immaterial. In *Cupples Company Manufacturers* v. *National Labor Relations Board,* 103 F. (2d) 953, 955 (C. C. A. 8), where, as in the instant case, the Board had issued a direction of election under Section 9 (c) and an order under Section 10 after a consolidated hearing, but had issued no certification, the Circuit Court of Appeals for the Eighth Circuit held that it could not entertain an inquiry as to the validity of the direction of election, but could do so only as to the order under Section 10.

Respondent and the intervenor also contended in their briefs in opposition to the petition for certiorari, at pages 4–5 and 5–6, respectively, that the court below did not purport to review or modify the direction of election. They argued, in effect, that

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the provision (*supra*, p. 20) in the court's decree in regard to the conduct of "the coming election, or any future election" under the Act was made merely as a modification of the Board's order of disestablishment under Section 10.

In regard to the contention that the court below did not purport to review or modify the Board's direction of election, it is true that the last paragraph of the court's order provides (R. 1214):

> It is further ordered that this court, by this order, is not approving nor is it disapproving the direction of the National Labor Relations Board in reference to a coming or possible election * * *

The paragraph then continues—

> this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc.

It will be recalled that a prior provision of the order (set out *supra*, pp. 11–12) requires that the employees shall remain free to vote for the Independent at "the coming election, or any future election" conducted by the Board. In view of this unequivocal direction, it seems probable that the statement that the court is not approving or disapproving the direction of election means only that the court does not require that the Board hold

an election, that is, that the Board may abandon the representation proceeding if it chooses, but that if it persists in holding an election the Independent must have a place on the ballot. The only other possible interpretation of the statement is that it is inconsistent with the earlier paragraph of the order and was inserted as an answer to the Board's contention in the court below, as here, that the court was improperly reviewing the direction of election. If the former interpretation be given the statement, the statement itself shows review of and modifies the Board's direction. If the latter interpretation be accepted as the true one, the court's characterization of its action cannot alter what it actually did.

The court's opinion (R. 1208–1210) on the Board's objections to the entry of the decree shows that the court in fact reviewed the direction of election in conjunction with its review of the Board's order under Section 10, and that the court intended that its decree should compel the Board, if it held an election, to provide a ballot which would enable the employees to vote for the Independent. The court stated in its opinion (R. 1209):

> If we had nothing before us but the terms of an election * * *, we would not act. * * *
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> We are, however, not merely passing on the terms of a contemplated or coming elec-

> tion. We have much broader and comprehensive issues to deal with. * * *
>
> * * * we have, in addition to ordering certain action by the employer (a disclaimer, so to speak) before us for final disposition, the matter of the selection of the bargaining agent. * * * we are passing upon the application of the Board for an order which deals with the selection of a bargaining agent and which, if we adopt the Board's position, proposes to eliminate for all time one of the candidates—the Independent Union. * * *

The court further stated (R. 1210) that the right of employees to choose their bargaining representative would not be—

> free or unhampered when the employees are denied the right to select one of the agencies or candidates by forcing that agency off the ballot.

Any claim that these remarks were addressed merely to the Board's order under Section 10 and do not show a review of the direction of election under Section 9 (c), is opposed by the fact that "the selection of a bargaining agent" and "the ballot," referred to by the court, were issues only in the representation proceeding under Section 9 (c). The statement (R. 1179) in the Board's decision that "In such election we shall make no provision for the designation of the Independent on the ballot," relied on by the intervenor (Br. in Opp. pp. 4–5) as having been made in the proceeding

under Section 10, was plainly made solely in connection with the direction of election under Section 9 (c). (See footnote 11, p. 21, *supra.*)

Conclusive evidence that the court below reviewed the direction of election and intended its decree to compel the Board, if it held an election, to utilize a ballot which would enable the employees to vote for the Independent, and thus, in effect, intended that its decree should modify the direction of election, appears from the last paragraph of the court's opinion, as follows (R. 1210):

> It is for this reason [i. e. that the Board's ballot would not afford a free choice as required by the Act] that *we have provided in the order that the coming election shall be * * * unhampered by any election order* which eliminates as a contender one agency which has, apparently, substantial support among the employees. [Italics supplied.]

In view of this interpretation of the decree by the court itself, it cannot be claimed that the decree may be construed merely as a modification of the Board's order requiring respondent to disestablish the Independent. The necessary and intended effect of the decree was to modify the Board's direction of election. In the absence of the direction of election, there would have been no occasion for the court even to have discussed the question of the form of ballot and the freedom of the employees to choose the Independent. See *National Labor Re-*

lations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

Finally, respondent contended (Br. in opp., pp. 6–7) that, the record of the proceedings having been filed, the court had general equitable power to grant such relief as would best serve the purposes of the Act. Cf. *Ford Motor Co.* v. *National Labor Relations Board*, 305 U. S. 364. This argument assumes that the provision in the court's decree in regard to the conduct of an election may be construed merely as a condition of enforcement of respondent's duty to withdraw recognition from the Independent, rather than as a modification of the direction of election. Even if the provision be so viewed, we submit that the court below exceeded its authority in making it. Assuming, *arguendo*, that the circuit courts of appeals, in their review of orders under Section 10, may in proper cases order enforcement upon conditions which they deem to be equitable, they "must act within the bounds of the statute and without intruding upon the administrative province." *Ford Motor Co.* v. *National Labor Relations Board*, 305 U. S. 364, 373. See also *Central Kentucky Gas Co.* v. *Railroad Commission of Kentucky*, 290 U. S. 264, 271–273. The decree of the court below, in prescribing that the employees shall be free to choose the Inde-

pendent in any election held by the Board, plainly infringes the Board's discretionary and purely administrative power to conduct the election pursuant to its own direction.

II

THE COURT BELOW ERRED IN MODIFYING THE WITHDRAWAL OF RECOGNITION AND DISESTABLISHMENT PROVISIONS OF THE BOARD'S ORDER

The issue on the merits is raised by the refusal of the court below to grant full enforcement to the provisions of the Board's order under Section 10 requiring respondent to withdraw all recognition from and completely to disestablish the company dominated Independent as a bargaining representative of the employees. It will be useful, as an introduction to the argument upon this issue, to review briefly the importance of the company union problem, the Congressional efforts to eliminate it, and the remedies adopted by administrative agencies and approved by the courts to give effect to the Congressional intent.

The dominant position occupied by the company union as a means of denying to employees freedom of choice in the selection of their bargaining representatives is a matter of common knowledge in our labor relations history.[13] In *Virginian Rail-*

[13] Company unions have long been used as a device to prevent genuine self-organization by giving to employees "the illusion of collective bargaining." Commons, John R., and Andrews, John B., *Principles of Labor Legislation* (4th ed.,

way Co. v. *System Federation No. 40*, 300 U. S. 515, this Court, referring particularly to experience on the railroads, took notice of the historical fact that (pp. 545–546):

> * * * a prolific source of dispute had been the maintenance by the railroads of

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1936), pp. 409–410. Company unions "have interested a majority of the employers because of their potentialities in combating unionism." Lescohier, Don D., *History of Labor in the United States, 1896–1932* (1935), Vol. III, p. 354. The authorities are almost unanimous in agreeing that the company union cannot serve as a genuine collective-bargaining representative and that its primary function is to oppose and destroy "outside" unions. Tead, Ordway, and Metcalf, Henry C., *Personnel Administration* (1933), pp. 430 *et seq.*; Fitch, John A., *The Causes of Industrial Unrest* (1924), pp. 147 *et seq.*; Yoder, Dale, *Labor Economics and Labor Problems* (1939), pp. 602 *et seq.*; Watkins, Gordon S., *Labor Problems* (1935), pp. 628 *et seq.*; Brooks, Robert R. R., *Unions of Their Own Choosing* (1939), pp. 68 *et seq.*; Daugherty, Carroll R., *Labor Problems in American Industry* (rev. ed., 1938), pp. 645 *et seq.*; Witte, E., *The Government in Labor Disputes* (1932), p. 218. The exhaustive study of company unions made by the Bureau of Labor Statistics, United States Department of Labor, concludes with this statement:

> "Examination of a representative group of 126 company unions indicates that their establishment was most frequently due to the pressure of trade union activity either in the form of organization drives or strikes in the trade or vicinity. Legislation and other governmental action was also an important factor. Few company unions were set up in the absence of such external influences."

U. S. Department of Labor, Bureau of Labor Statistics, *Characteristics of Company Unions*, Bulletin No. 634 (1935), p. 1938. It was estimated in 1935 that some 2,500,000 employees were organized in "inside" unions. Twentieth Century Fund, *Labor and the Government* (1935), p. 79.

company unions and the denial by railway management of the authority of representatives chosen by their employees. Report of House Committee on Interstate and Foreign Commerce, No. 1944, 73rd Cong., 2d Sess., pp. 1–2.

The company union problem was in the forefront of congressional attention when Congress enacted the National Labor Relations Act in 1935.[14] The Report of the House Committee on Labor (H. Rept. No. 1147, 74th Cong., 1st Sess., pp. 17–19) places great emphasis upon the company union evil, and dwells at length upon the extensive development of such organizations subsequent to the enactment of the National Industrial Recovery Act. It points out that about 70 percent of the company unions then in existence were established after that statute was passed, that they "were a primary or attendant cause of the disputes in about 30 percent of the cases heard by" the first National

[14] In both the Norris-LaGuardia Act passed in 1932, and the National Industrial Recovery Act, passed in 1933, Congress had addressed itself to the problem of the company union. In the former (Act of March 23, 1932, 47 Stat. 70) Congress declared that employees "shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of" collective bargaining representatives. In the latter (Act of June 16, 1933, 48 Stat. 198) Congress inserted the same provisions in Section 7 (a) and added an express restraint against requiring any employee "to join any company union." See also the 1933 amendments to the Bankruptcy Act (47 Stat. 1481, U. S. C., Title 11, Sec. 205 (p) and (q)).

Labor Relations Board, and that most company unions "had become active in contemplation of or contemporaneously with a trade-union organizing movement." The Committee declared the purpose of the National Labor Relations Act in this regard as follows (p. 17):

> It is of the essence that the right of employees to self-organization and to join or assist labor organizations should not be reduced to a mockery by the imposition of employer-controlled labor organizations, particularly where such organizations are limited to the employees of the particular employer and have no potential economic strength.[15]

These facts are fully set out in the opinion in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 266–268.

A problem so important to the protection of the freedom of employees in self-organization and designation of their representatives for collective bargaining plainly demanded preventive and remedial measures which would be effective. The model was supplied by the landmark decision of this Court in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548. In that case the district court, upon a bill alleging that the carrier was interfering with the freedom

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[15] To the same effect, see the Report of the Senate Committee on Education and Labor (S. Rept. No. 573, 74th Cong., 1st Sess., pp. 9–10).

of its employees to choose their representatives, entered a temporary injunction closely following the language of the Railway Labor Act (24 F. (2d) 426, 427). Thereafter the district court found that, among other respects, the carrier had committed contempt in recognizing a company union as the representative of the employees. To remedy this violation of the injunction decree, the court directed the carrier completely to "'disestablish the Association * * *' as it was then constituted as the recognized representative of the clerical employees" of the carrier (281 U. S. at 557). This Court sustained the ruling below in full, declining to accept the claim "that the decree below goes beyond the proper enforcement of the provision of the Railway Labor Act" (281 U. S. at 571).

The affirmative remedy thus judicially approved in the *Texas & New Orleans* case has received well-nigh universal acceptance. It was uniformly applied by the first National Labor Relations Board when it found that an employer had violated Section 7 (a) of the Recovery Act by fostering, dominating, or supporting a labor organization of his employees.[16] The Petroleum Labor Policy Board made similar orders in two cases.[17]

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[16] *Matter of Stahl-Urban Co.*, 2 N. L. R. B. (old) 149 (1935); *Matter of Procter & Gamble Mfg. Co.*, *ibid.*, p. 192 (1935); *Matter of Universal Folding Box Co.*, *ibid.*, p. 284 (1935); *Matter of Standard Tailoring Co.*, *ibid.*, p. 422 (1935); *Matter of National Battery Co.*, *ibid.*, p. 484 (1935). *Cf. Matter of North Carolina Granite Corp.*, 1 N. L. R. B. (old) 89 (1934); *Matter of Danbury & Bethel Fur Co.*, *ibid.*,

This judicial and administrative treatment of a pressing problem was known to and approved by Congress in enacting the National Labor Relations Act. As pointed out in this Court's decision in the *Pennsylvania Greyhound* case (303 U. S. at 267):

> In recommending the adoption of this latter provision the Senate Committee called attention to the decree which, in the *Railway Clerks* case, had compelled the employer to "disestablish its company union as representative of its employees." Report of the Senate Committee on Education and Labor, *supra*. The report of the House Committee on Labor on this feature of the Act, after pointing out that collective bargaining is "a sham when the employer sits on both sides of the table by supporting a particular organization with which he deals," declared: "The orders will of course be adapted to the need of the individual case; they may include such matters as refraining from collective bargaining with a minority group, recognition of the agency chosen by the majority for the purposes of collective bargaining, posting of appropriate bulletins, *refraining from bargaining with an organization corrputed by unfair labor practices.*" Report of the House Committee on Labor, *supra*, pp. 18, 24. [Italics supplied.]

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p. 195 (1934); *Matter of Samson Tire & Rubber Corp.*, 2 N. L. R. B. (old) 499 (1935).

[17] *Matter of the Texas Co.*, Decisions of the Petroleum Labor Policy Board, p. 29 (1934); *Matter of Keener Oil and Gas Co.*, *ibid.*, p. 53 (1935).

Consistently with this clear Congressional intention that disestablishment should be a normal remedy for violations of Section 8 (2) of the Act, it has been uniformly ordered by the Board upon findings of such violation.[18] In the three cases involving such an order decided by this Court, this remedy has been approved and enforced. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.[19] The appropriateness of the remedy has likewise received widespread recognition from the various circuit courts of appeals.[20]

It is in this setting that the instant case falls. Experience has shown and Congress and this Court

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[18] Disestablishment has been ordered by the Board in more than 300 cases.

[19] The question is again before the Court in *National Labor Relations Board* v. *Newport News Shipbuilding & Drydock Co.*, No. 20, this Term, argued and pending decision.

[20] *National Labor Relations Board* v. *Ronni Parfum, Inc.*, 104 F. (2d) 1017 (C. C. A. 2); *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2); *National Labor Relations Board* v. *National Licorice Co.*, 104 F. (2d) 655 (C. C. A. 2), certiorari granted, October 9, 1939; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. (2d) 167 (C. C. A. 3), certiorari denied, November 6, 1939; *Republic Steel Corp.* v. *National Labor Relations Board*, decided November 8, 1939 (C. C. A. 3); *Titan Metal Mfg. Co.* v. *National Labor Relations Board*, 106 F. (2d) 254 (C. C. A. 3); *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. (2d) 713 (C. C.

have recognized that company dominated unions are incompatible with the freedom of choice guaranteed in the Act to employees; that such organizations present one of the most potent forms of the prohibited interference; and that where found to exist, the appropriate measure to eliminate such organizations from the collective bargaining field is the disestablishment order. The action of the

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A. 3); *National Labor Relations Board* v. *J. Freeezer & Son, Inc.*, 95 F. (2d) 840 (C. C. A. 4); *National Labor Relations Board* v. *Wallace Mfg. Co., Inc.*, 95 F. (2d) 818 (C. C. A. 4); *National Labor Relations Board* v. *Eagle Mfg. Co.*, 99 F. (2d) 930 (C. C. A. 4); *Virginia Ferry Corp.* v. *National Labor Relations Board*, 101 F. (2d) 103 (C. C. A. 4); *National Labor Relations Board* v. *Colten et al.*, 105 F. (2d) 179 (C. C. A. 6); *Cudahy Packing Co.* v. *National Labor Relations Board*, 102 F. (2d) 745 (C. C. A. 8), certiorari denied, October 9, 1939; *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8); *National Labor Relations Board* v. *Lund*, 103 F. (2d) 815 (C. C. A. 8); *Wilson & Co., Inc.* v. *National Labor Relations Board*, 103 F. (2d) 243 (C. C. A. 8); *National Labor Relations Board* v. *American Potash & Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9), certiorari denied, 306 U. S. 643; *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9), certiorari denied, 304 U. S. 575; 99 F. (2d) 533 (C. C. A. 9), certiorari denied, 306 U. S. 646; *Swift & Co.* v. *National Labor Relations Board*, 106 F. (2d) 87 (C. C. A. 10).

Contra: National Labor Relations Board v. *Newport News Shipbuilding & Drydock Co.*, 101 F. (2d) 841 (C. C. A. 4), argued and pending decision, No. 20, this Term; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 106 F. (2d) 119 (C. C. A. 1). The Board will file a petition for certiorari in the *Bradford Dyeing* case.

court below not only overrules the decision of the administrative body, but is in conflict with long industrial experience, with the deliberate judgment of Congress based upon that experience, expressed in the Act and its legislative history, and with the decisions of this Court.

In the present case, the Board's findings that respondent dominated and interfered with the formation and administration of the Independent and had contributed support to that organization, in violation of Section 8 (2) of the Act, were fully supported by the evidence (*supra*, pp. 5–10) and were approved by the court (R. 1198–1206). On those findings, the court should have enforced the affirmative provisions of the Board's order without modification unless those provisions constituted an abuse of the Board's judgment or discretion in determining the particular relief appropriate in the circumstances. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240. Instead, the court modified the order by providing that the Independent shall remain eligible for selection as a bargaining representative and by adding to the notices which respondent was directed to post an announcement that respondent would again accord recog-

nition to the Independent if it were selected by the employees in the election directed by the Board.[21]

The court placed its modification squarely upon the theory that, while the provisions for disestablishment and withdrawal of recognition were proper, the employees nevertheless must be permitted to select the disestablished organization as their representative in the election directed by the Board. We submit that the court erred. The Board's requirement that respondent withdraw recognition from the Independent as a bargaining representative of the employees was essential to establishment of a free choice and thus to effectuate the policies of the Act. The Board should not be obliged at the same time to undo this remedy by placing the company-dominated organization on the ballot. Such action would frustrate the whole purpose of the election: to permit a choice free from the effects of employer interference.

A. THE BOARD HAS POWER TO ORDER THE PERMANENT DISESTABLISHMENT OF AN EMPLOYER DOMINATED UNION

Full enforcement of the remedy approved by this Court in the *Greyhound* cases and the *Fansteel*

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[21] We shall assume, for purposes of the discussion, that the court below enforced the disestablishment provisions of the Board's order, subject to the conditions imposed. In fact, however, only the provision (paragraph 2 (b) (2), R–1181) requiring the posting of notices announcing the disestablishment was enforced; the provision of paragraph 2 (a) (R. 1180), requiring respondent to disestablish the Independent as a bargaining representative, was omitted from the court's decree, which was confined to requiring withdrawal of recognition (R. 1213; *supra*, pp. 11–12).

case, *supra*,. is indispensable if there are to be created in respondent's plant conditions for the freedom of choice which the Act guarantees but which respondent's employees were precluded from enjoying by the establishment of the company dominated and supported Independent at the very moment when that freedom appeared to be imminent. In the *Greyhound* cases, this Court recognized the validity of the Board's conclusion that the effects of employer domination and interference normally continue of their own momentum long after the violations themselves have ceased (303 U. S. at 270, 275). Similarly, in *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, the Court said (at p. 236):

> The continued existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequence of violation of the Act whose continuance thwarts the purposes of the Act and renders ineffective any order restraining the unfair labor practices.

1. *The attitude of the employees toward a union which has been employer dominated will probably never be wholly free from employer influence*

The court below in the present case imposed conditions upon the disestablishment remedy which destroy its efficacy. It held that, after a period during which the Independent is to be under a disability to serve as a bargaining representative, it is again to be put forward for selection by the

employees. Its further functioning as a bargaining representative is temporarily suspended but not permanently terminated. This holding appears to be based upon the same premise which was advanced against the disestablishment provisions of the Board's orders in the *Greyhound* and *Fansteel* cases, that is, that a labor organization which, like the Independent, has been formed at the instigation of the employer, has been dominated and supported by the employer throughout its history, has been used as an instrument to prevent freedom of choice by the employees, and has achieved its membership and position as a result of these unfair labor practices, may be freely chosen by the employees when the violations of law which brought it into existence and enabled it to achieve an exclusive bargaining status have ceased. We submit that this premise is not tenable.

The consequence of violations of Section 8 (2), such as those in which respondent engaged, is the existence of a company dominated and supported labor organization and the adherence of employees to it. Such an organization itself inevitably stands in the minds of the employees as the candidate of the employer, an attribute which it gained by reason of the employer's unfair labor practices, and that position necessarily precludes it from a place on the ballot and requires its complete and permanent disestablishment as a bargaining representative of the employees.

It is no answer that here the court has required a period of nonrecognition and suspension of bargaining relations, a period to be terminated by the votes of the employees who have been subjected to the interference, whereas in the *Greyhound* and *Fanstel* cases the lower courts refused to order any withdrawal of recognition. This distinction, too, necessarily assumes that at some point the employees will cease to regard the Independent as respondent's handiwork and that respondent's interference and domination will thereupon cease to influence their choice. It is far more likely that the Independent, in the minds of the employees, will always be identified with the management which called it into existence and coerced the employees to join it, and that the employees will regard any renewed entrance by the Independent into the competition for recognition as a reentry of respondent's candidate. The Independent is a symbol of respondent's active opposition to efforts by its employees to exercise the rights guaranteed in the Act. It has been used to defeat such efforts. The Board has the right to conclude that the employees will continue, as they have in the past, to regard the Independent as an organization which is identified with respondent.

Moreover, if a formerly employer-dominated organization—here the Independent—is permitted to continue to compete for membership of the employees and for status as their bargaining representative, it may be expected to retain the same

structure, policies, and officials the choice of which would in most cases, as here (see *supra*, pp. 5–10), have been decisively influenced by the employer and shaped with an eye to his approval. The continuance of these characteristics would enhance the identification of the employer and the organization in the minds of the employees. Further, the officers who would continue in control would normally have been the particular instrumentalities and agents of company domination. In an election with such an organization on the ballot the employees would clearly not have the freedom of choice which the Act guarantees.

Even if it could be assumed that, at some time, employees will no longer be influenced in their choice of bargaining representatives by their employer's former domination of a labor organization, denial to the Board of power to order permanent disestablishment would impose upon it the virtually impossible task of determining when the interference had ceased to have any effect. It cannot now be challenged that employer domination and support of a labor organization subject the employees to compulsions; this nexus has been repeatedly discerned by the Court (*supra*, pp. 29–34), is the entire foundation of the second unfair labor practice proscribed by the Act, and can be readily verified in experience. The Board need not, therefore, receive proof in each case that the compulsions have been engendered. But there are no such

aids in determining that employees have ceased to regard a company dominated organization as their employer's candidate. Such a determination would necessarily be speculative. The Board should not be required to permit company sponsored labor organizations, which were a prime object against which the Act was directed, to resume operations upon the Board's guess that they will not prove harmful. Rather, the Board should be permitted to avoid the necessity of such speculation.

2. *Continued domination of a union by an employer who formerly dominated it would be easy, yet difficult of detection*

Thus far we have assumed *bona fide* employer compliance with the Board's cease and desist order. Upon this assumption, as has been stated, the necessity for the complete and permanent disestablishment of formerly employer dominated organizations stems from the inability to eradicate, by means of a cease and desist order, the results of employer domination. In addition, if the old organization is permitted to continue, violation of the cease and desist order is markedly facilitated. An employer bent upon further domination and control could more easily effect and conceal such control of the old organization, which was designed and officered in accordance with his wishes, than he could of a new organization created subsequent to

the cease and desist order and without the employer's participation. It would be difficult, as an evidentiary matter, to lay at the door of the employer that intangible but easily sensed subservience to him resulting from a history of domination. On the other hand, more obvious and hence more easily detected forms of interference would be necessary to dominate and control a new organization. That feasible policing and enforcement of a law sometimes warrant prohibitions not otherwise justifiable has been recognized by the Court. See *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201–205; *Booth* v. *Illinois*, 184 U. S. 425, 429–430; *Silz* v. *Hesterberg*, 211 U. S. 31.

3. *Any possible restriction on employee choice resulting from permanent disestablishment is slight compared with the advantages of the remedy*

The sole contention advanced against the propriety of complete and permanent disestablishment is a claim that freedom of choice may be restricted because some employees may freely desire the Independent. It is true that those hypothetical employees who may desire to be represented by the Independent and who may have remained uninfluenced by the unfair labor practices, or who may assert that they have cast off such influence during the period of nonrecognition, are denied the Independent. Assuming the existence of such employees and the possible restriction on an absolutely free choice by them, it is apparent

that the restriction is not a serious one. Those employees who desire an unaffiliated organization are free to form a new union. Indeed, an insistence by some of the employees upon resurrection of the discredited and disestablished Independent in preference to pursuing the ready alternative of choosing other representatives, suggests that their purpose is to retain the advantages of prestige and position vested by the employer in the beneficiary of its interference and support, and thus that the direction of their choice is a result of the employer's illegal acts, designed to produce that very result.

If a slight restriction is effected, however, it is outweighed by the probability, which lies at the very basis of the disestablishment order, that other employees will be heavily influenced by the history of the Independent and by their consequent knowledge that that organization is the employer's candidate. The restriction, if one exists, is thus necessary to the accomplishment of one of the Act's chief purposes—the elimination of company dominated unions—by maintaining in full the efficacy of the important disestablishment remedy. If company unions are permitted to resume their functioning in order to preserve a completely unrestricted choice by a supposed group of employees, whose will is assumed to be free despite the existence of compulsion established in common experience and presumed by the Act, this device may well become

again an outstanding means of denying to employees all freedom of choice. In sum, the modification of the Board's order made by the court below would encourage violations of Section 8 (2), for, notwithstanding such violations, the existence of the company dominated organization is carefully preserved for the purposes—illegal under the Act—which brought it into existence.

B. EVEN IF THE BOARD CANNOT ORDER PERMANENT DISESTABLISHMENT, THE CONDITIONS IMPOSED BY THE COURT ARE UNREASONABLE

Under heading A we argued that the Board has power to require the permanent disestablishment of an employer dominated labor organization. Under the present point we assume, *arguendo*, that the Board could not reasonably impose such a requirement because, contrary to what we believe the fact to be, there is a point at which the interference worked by prior violations of Section 8 (2) would no longer influence the employees even if the organization which was the object of the interference and domination were placed on the ballot. Even upon such an assumption, the order of the court below is improper.

1. *The court could not properly assume that, by the time of the election, the Independent could appear on the ballot without unfairly influencing the employees' choice*

Even were it possible for the Board to determine, upon sufficient evidence, that a labor organization formerly dominated by the employer should

be eligible for selection as a bargaining representative because the effects of the interference worked by the violations of Section 8 (2) have been completely dissipated, the court below could not properly assume that such a finding would be appropriate in this case prior to the election directed by the Board

Such an assumption could not be based upon the fact that the Board directed the election to be held "upon our further order after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order" (R. 1179). These words were part of the provision for an election without the Independent on the ballot. The Board's clear intent was that such an election be held when the employees were enabled, through respondent's compliance with the disestablishment and other provisions of the order, to exercise a free choice for or against, or between, organizations other than the Independent. Respondent's illegal interference was designed to coerce the employees to select the Independent as their bargaining representative. There is a readily perceptible distinction between the effect of such interference in an election participated in by the Independent, so that the employees again have an opportunity to do exactly what respondent has in the past coerced them to do, and its effect in an election without respondent's favorite as a candidate.

If we are wrong in thinking that a fair election of the first type could never be held among respondent's employees, it is, at least, clear that a considerable period of time would have to pass before such an election would be possible. It certainly was not an abuse of discretion for the Board to determine that the employees should not indefinitely be denied all opportunity to select a representative—with the consequent postponement of the collective bargaining which the Act fosters—until a determination can be made, if it ever can, that respondent's sponsorship of the Independent will not influence an election in which that organization participates.

2. The conditional disestablishment ordered by the court cannot serve to recreate freedom of choice by respondent's employees

Still assuming that there may be circumstances under which effectual remedying of the Section 8 (2) violations will permit the employees to exercise a free choice between a formerly company-sponsored organization and a *bona fide* labor union, the order of the court below is self-contradictory in that the relief framed by the court will not serve to create conditions for such a choice, although the court requires that the choice be made. The fragmentary disestablishment ordered by the court below cannot serve to restore the freedom which respondent has destroyed. In fact, the

court's remedy negatives the meaning of disestablishment and effectively withholds what it pretends to grant.

An effort to overcome the effects of employer domination of a labor organization can succeed only if it is brought home to the employees that, because of the employer's sponsorship, the organization is not a fit medium for collective bargaining and is not entitled to recognition for what it is not—a free and independent representative of employees. Cf. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271. The order of the court cannot transmit that message. This disqualification which it imposes is conditioned upon the employees' repudiation of the Independent in an election and the notices, as modified by the court, expressly inform the employees that respondent will again recognize the Independent if it is chosen in the election. There is no disavowal of the organization, no turning of the employer's face from the fruits of his illegal acts. If an employer voluntarily ceased his flagrant violations of Section 8 (2) and announced that he would bargain neither with his favorite *nor with any other organization* until the employees voted for or against his choice, it could not be contended with reason that effective steps had been taken to undo the results of the violations. There is no reason to suppose that this action will be more effective to achieve the purposes

of the Act merely because it is undertaken upon order of the court.

These and related difficulties arising from the modifications made by the court below pose a serious problem to the Board in the administration of the Act. The Board has applied the disestablishment remedy in hundreds of cases, and has done so because violations of Section 8 (2) interfere with and canalize the desires of the employees, as the Congress found. The decision of the court below substitutes for these clear principles of administration criteria which are not susceptible of orderly application. These criteria, applicable in principle in all cases whether or not elections are simultaneously pending, require the Board to speculate, from the different circumstances of each case, whether the effects of the employer's unfair labor practices have been dissipated. The simple and effective disestablishment remedy consistently ordered by the Board is appropriate to remove the effects of employer domination and interference and to recreate the freedom of choice upon which genuine collective bargaining depends. It merely removes that which was unlawfully brought into being. The remedy was appropriate to the facts of the case and the problem dealt with, and was not unreasonable or arbitrary. It should, therefore, be granted enforcement. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265.

CONCLUSION

It is respectfully submitted that the decision of the court below, insofar as it modified the order of the Board, should be reversed, and the cause remanded with directions to grant the order full enforcement.

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NOVEMBER 1939.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 *et seq.*) are as follows:

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * * *

SEC. 9. * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SEC. 10. * * *

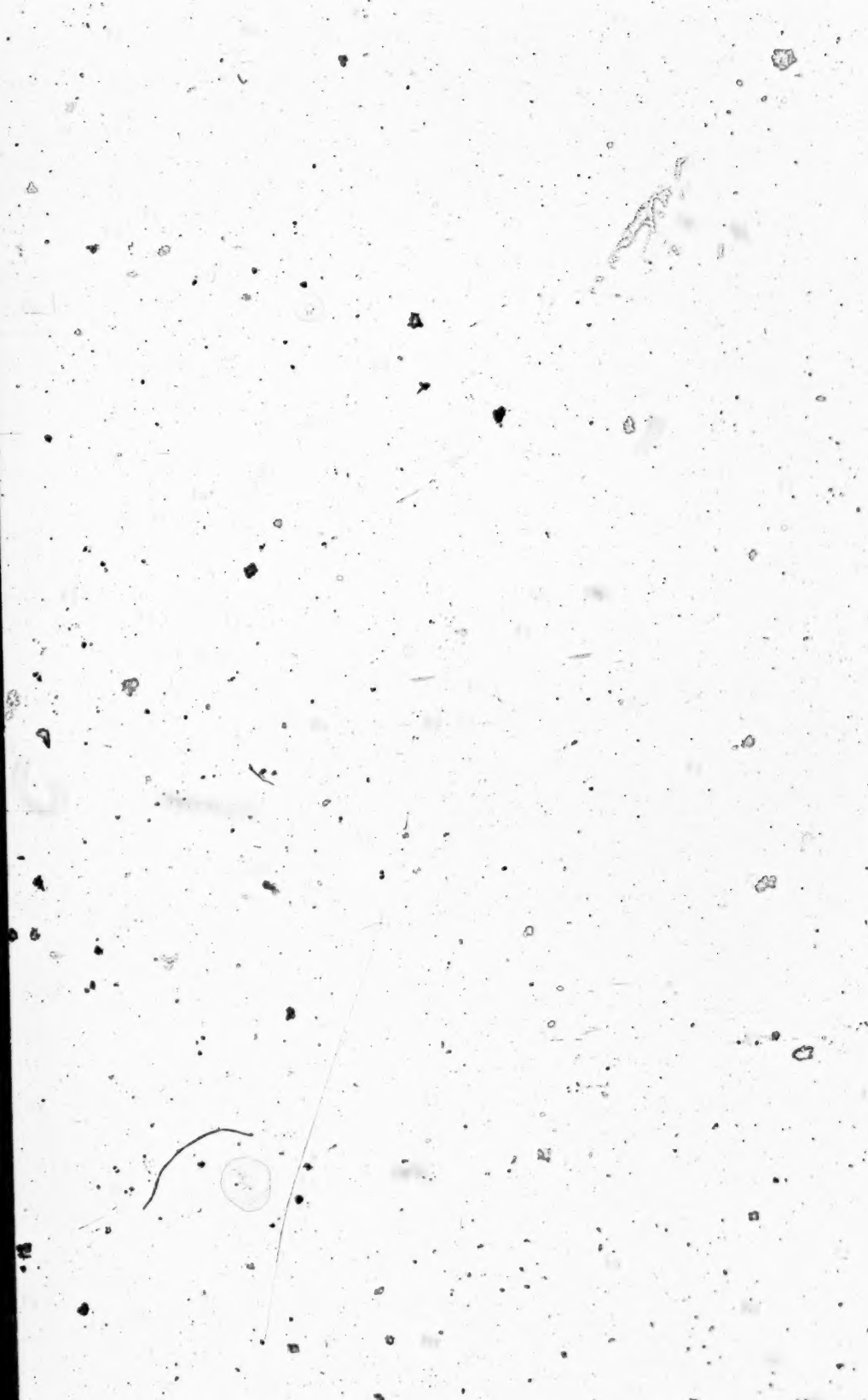
(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or, if all

the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1939



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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM — 1939

No. 460

NATIONAL LABOR RELATIONS BOARD, Petitioner,

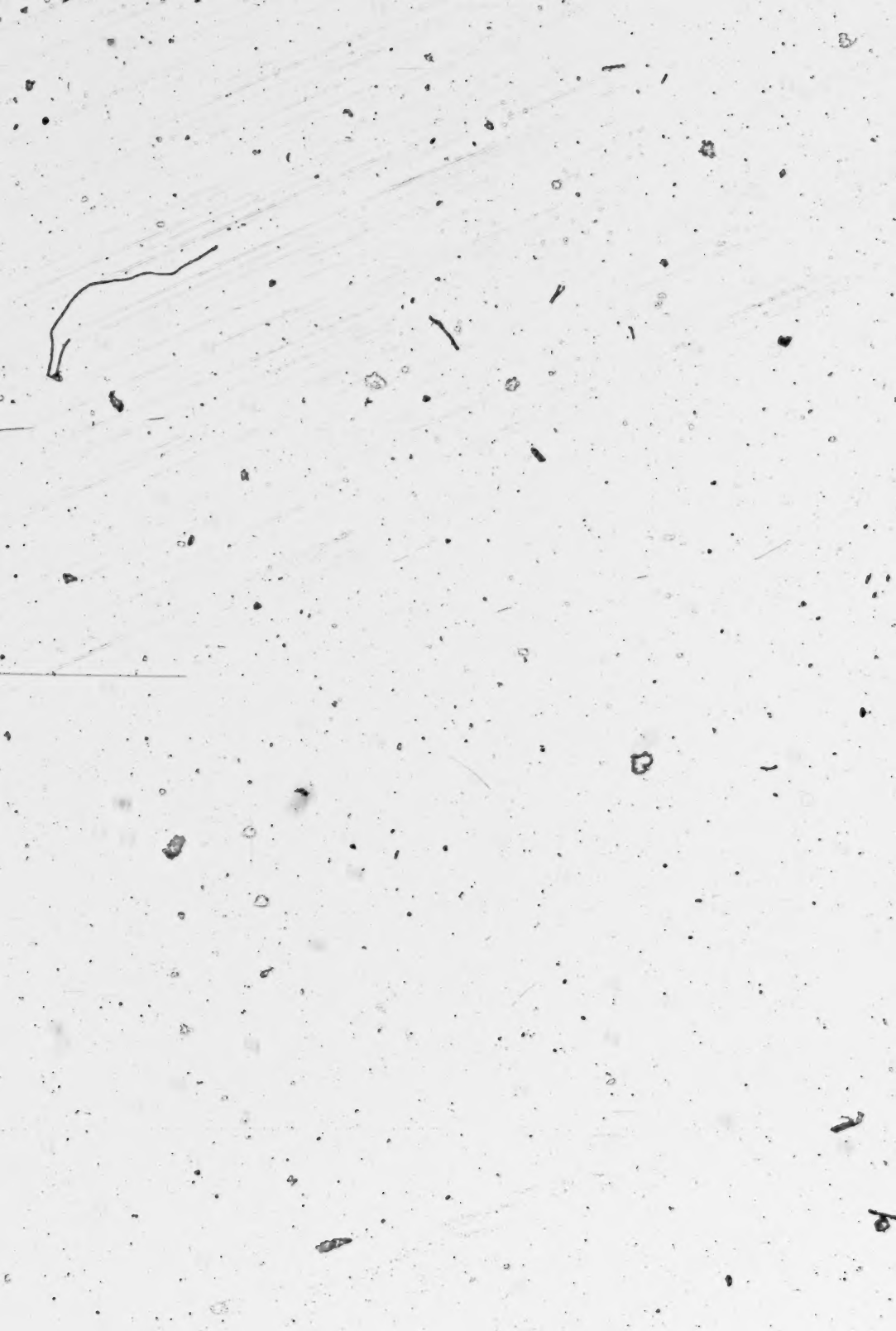
vs.

THE FALK CORPORATION.

Reply Brief of Respondent, The Falk Corporation,

In Opposition to Petition of the National Labor Relations Board for a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

LEON B. LAMFROM,
A. J. ENGELHARD,
Counsel for Respondent,
The Falk Corporation.



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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM — 1939

No. 460

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

THE FALK CORPORATION.

Reply Brief of Respondent, The Falk Corporation,

In Opposition to Petition of the National Labor Relations Board for a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

The respondent, The Falk Corporation, prays that petitioner's petition for writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Seventh Circuit, entered on July 13, 1939, be denied.

OPINIONS BELOW.

The order of the National Labor Relations Board is reported in 6 N. L. R. B. 654 (R. 1165-1180). The first opinion

of the Circuit Court of Appeals is reported in 102 F. 2d 383 (R. 1198). The second opinion of the Circuit Court of Appeals is reported in 106 F. 2d 454 (R. 1208).

JURISDICTION.

The petitioner, National Labor Relations Board, has invoked the jurisdiction of this Court under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act (49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 *et seq.)* are set forth in the Appendix, *infra*, pp. 15-7.

SUMMARY OF ARGUMENT.

1. Upon an application by the National Labor Relations Board for an enforcement order under Section 10 (e) of the National Labor Relations Act, in proceedings in which were consolidated for the purposes of hearing a representation proceedings, under Section 9 (c) of the Act, and an unfair labor practices proceeding under Section 10 of the Act, the Circuit Court of Appeals had jurisdiction to enter the decree of which petitioner now seeks review.

2. The decision of the Circuit Court of Appeals for the Seventh Circuit in the present case is not in conflict with any decision of any other Circuit Court of Appeals, and is in complete accord with the applicable decisions of this United States Supreme Court.

ARGUMENT.

I.

The lower court had jurisdiction to enter the decree.

In the present case the National Labor Relations Board, as permitted by its rules, ordered the unfair labor proceeding brought against respondent under Section 10 of the National Labor Relations Act and the proceeding to investigate and certify the representatives for collective bargaining brought under Section 9 (c) of the Act to be consolidated in the conducting of the hearing (R. 1168). The order of the Board was made, therefore, pursuant to Section 10 (c) (i.e. upon a complaint of unfair labor practices), based in part upon facts certified following the investigation for election held pursuant to Section 9 (c) of the National Labor Relations Act.

The language of subsection (d) of Section 9 most clearly indicates the intention of the Act in permitting a court, upon proceedings as were taken in the present case under Section 10 (e) of the Act, to take jurisdiction so as to, in the words of the lower court, settle and finally dispose of a labor dispute case.

That subsection reads as follows:

> "(d) Whenever an order of the Board made pursuant to Section 10 (c) is based in whole or *in part* upon facts certified following an investigation pursuant to subsection (c) of this section (i.e. Section 9) and there is a petition for the enforcement or review of *such order*, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), *and thereupon the decree of*

the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript." (italics ours).

There was, accordingly, within the terms of 9 (d), a petition to the lower court for an enforcement or review of the Board's order on unfaig labor practices, and for that reason the direction of election and the record of the investigation conducted with it was included in the transcript (R. 1181). The decree of the lower court could be made therefore upon the entire proceedings brought to its attention upon an appeal under 10 (e) and in direct accordance with the provisions under Section 9 (d) of the Act. Without considering any appeal from an order or certification of an election unde 9 (c) of the National Labor Relations Act, the court has found, because of the particular evidence brought before it under 10 (e) and 9 (d) of the Act, that a free choice of the employees, in accordance with the purposes of the National Labor Relations Act, would best be carried out by enforcing the order of the Labor Board that the Independent Union no longer be recognized by the company, but by adding thereto the proviso that it not be so recognized until such time however as it is properly and freely, in accordance with the order of the Board, chosen by the employees in whatever coming election the Board may deem advisable to hold.

Counsel for the petitioner assert as their opening argument, at page 12 of their petition for writ of certiorari, that the court below passed upon the coming election "directly and well-nigh exclusively." But the lower court itself made clear that it was not passing upon the election of the Board but was rather concerned in settling and definitely disposing of the labor controversy brought before

it. The opinion takes no position as to how the election of the Board should be held or when it should be held. All details and all supervision over that election remain entirely with the Board, and where or when, or even if it is conducted at all, is held to rest entirely with the Board's discretion. The court has, in fact, and in accordance with the Board's application, ordered the respondent to withdraw all further recognition from the Independent Union, until such time, however, that the employees freely and without any further influence choose some union for representation at any coming election which might be conducted by the Board.

As stated by the lower court, in its own language:

> "We are disposing of a labor dispute case wherein the proceedings have gone beyond mere plans by the Board for the calling of an election. We are, *upon the Board's petition*, disposing of a labor dispute which involved alleged interference on the part of the employer with the selection of the bargaining agent by the employees.
>
> "* * * It is not a case of our assuming jurisdiction in reference to an election, which may be held or called off, and therefore is not in the state of finality which permits of review, but we are passing upon *the application of the Board* for an order which deals with the selection of a bargaining agent and which, if we adopt the Board's position, proposes to eliminate for all time one of the candidates—the Independent Union. Under such circumstances we think the jurisdiction of the court to dispose of the matter clearly exists" (R. 1209).

That it was the intention of the Act that such jurisdiction as was taken by the lower court should exist is evident by the report of the House of Representatives' Committee on Labor to whom the National Labor Relations Act was

referred before its enactment for investigation and extended hearings. The committee in its report to the House stated:

> "Section 9 (d) of the bill makes it clear there is to be no court review prior to the holding of the election, and provides an exclusive, complete and adequate remedy whenever an order of the Board made pursuant to Section 10 (c) is based in whole or in part upon facts certified following an election *or other investigation pursuant to Section 9 (c)*. The hearing required to be held in any such investigation provides an appropriate safeguard and opportunity to be heard. *Since the certification and the record of the investigation are required to be included in the transcript of the entire record filed pursuant to Section 10 (e)* or (f), *the Board's actions and determinations of fact and law in regard thereto will be subject to the same court review as is provided for its other determinations under Sections 10 (b) and 10 (c).* (Report No. 1147, page 23, 74th Congress) (italics ours).

And in the same report, in referring to appeals from orders entered against unfair labor practices, the following significant language is used:

> "The form and nature of the Board's order will of course be subject to court review, *along with the other determinations* and actions *of the Board in the case*, both as to the facts and the law, in the manner provided in subsection (e) or (f)" of Section 10. (Report No. 1147, page 24, 74th Congress) (italics ours).

Even were the terms of the National Labor Relations Act not so clear it would be manifest that on general legal and equitable principals, the Circuit Court of Appeals acting upon the Board's own application had, in the present case complete jurisdiction to dispose finally of the entire proceedings. As a court of equity, it could grant such re-

lief to the parties before it as best served the purposes and intention of the National Labor Relations Act. It has adhered to the cardinal principle of that act by granting to the employees of the respondent company the right to choose freely their own representative for collective bargaining. It has safeguarded that right by enjoining the respondent company from continuing those practices which the Board has deemed unfair, and from in any wise influencing the employees in that future choice. It has, upon the transcript of the complete record brought before it by the procedure expressly set up under the terms of the Act (Section 9 (d)), considered and disposed of all the issues in controversy before it.

As stated by this Court in *Ford Motor Co. vs. National Labor Relations Board*, 305 U. S. 364; once the jurisdiction of the court has attached by reason of the Board's bringing a petition for enforcement under Section 10 (e), precisely as it has in the present case, the Circuit Court of Appeals has "exclusive jurisdiction of the administrative proceeding."

At page 369:

> "The aim of the Act is to attain simplicity and directness both in the administrative procedure and on judicial review. Where the Board has petitioned for enforcement under Section 10 (e) and the jurisdiction of the court has attached, no separate proceeding is needed on the part of the person thus brought into the court. The breadth of the jurisdiction conferred upon the court to set aside or modify in whole or in part the Board's order, or to permit new evidence to be taken, necessarily implies that the party proceeded against is entitled to raise all pertinent questions and to obtain any affirmative relief that is appropriate."

II.

The decision of the lower court is not in conflict with the decisions of any other Circuit Court of Appeals.

Since, as stated by counsel for the petitioner, no order concerning election had been appealed to the lower court in the present case, the court has acted solely upon the individual facts before it, and the particular procedure here taken and in no way in conflict with the decision of the Sixth Circuit Court of Appeals in *National Labor Relations Board vs. International Brotherhood of Electrical Workers*, 105 F. 2d 598, as cited in the petition for writ at page 13.

That case did not involve, as does the case at bar, an application of the Board for an enforcement order under Section 10 (e) of the Act, but did involve rather an appeal by the union "to review and set aside an order of the National Labor Relations Board directing an election." The lower court in that case held it had jurisdiction to review the order for election, and in *United Employees Association vs. National Labor Relations Board*, 96 F. 2d 875, and the cases cited by petitioner in the footnote at page 13 of its petition, * other Circuit Courts of Appeal have, to the contrary, held that appeal from an order for, or certification of, an election does not lie. Because, in the present case, as admitted by petitioner, no appeal from a direction or certification of election was brought, the question of whether the court can entertain an appeal from an election order

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* **Cupples Company Manuf'rs vs. National Labor Relations Board,** 103 F. (2d) 953, 955 (C. C. A. 8th); **Unlicensed Employees of Sabine Transportation Co. vs. National Labor Relations Board,** decided November 12, 1937 (C. C. A. 5th) (reported in C. C. H., Labor Law Service, p. 16040), **New York Handkerchief Co. vs. National Labor Relations Board,** 97 F. (2d) 1010; **Armour & Co. vs. National Labor Relations Board,**

is not in issue. That question will be decided by this court in the two cases referred to by counsel in their petition and in which certiorari has already been granted:

National Labor Relations Board vs. International Brotherhood of Electrical Workers, 105 F. (2d) 598 (C. C. A. 6th) certiorari granted, October 9, 1939, No. 253, this Term.

American Federation of Labor vs. National Labor Relations Board, 103 F. (2d) 933, certiorari granted, October 9, 1939, No. 70, this Term.

III.

The order of the lower court is not in conflict, but is in complete accord with the decisions of the United States Supreme Court.

The *Ford* case (*Ford Motor Co. vs. National Labor Relations Board*, 305 U. S. 364 discussed above at pg. 7) should dispose entirely of the argument of the Board in its petition that the lower court's decision is in conflict with the applicable decisions of this Court. To support its position, however, the Board cites the decisions of this Court in *National Labor Relations Board vs. Pacific Greyhound Lines, Inc.*, 303 U. S. 272, and *National Labor Relations Board vs. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.

In the present case, however, it is submitted that the lower court, in ordering the respondent no longer to recognize the Independent Union, has acted in entire accordance with the *Greyhound* cases. It has in no manner, by inference or implication, suggested, as petitioner urges, that an election is a prerequisite to the disestablishment of the Union. It has, to the contrary, ordered expressly such disestablishment before the election is to take place. In the *Greyhound* cases, this Court, in considering the particular

facts of those cases as they were presented, just as the lower court has taken cognizance of the full facts of the present case as shown by the record before it, declared:

> "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employees under section 9 (c), even though it had ordered the employer to cease unfair labor practices. But here (i.e. in the Greyhound case) respondents, by unfair labor practices, have succeeded in establishing a company union so organized that it is incapable of functioning as a bargaining representative of employees" (at p. 270).

In the present case, unlike the unfair labor practices before the court in the *Greyhound* cases, the facts show that upon the employer ceasing such interference as was deemed by the Board to constitute unfair labor practices, the situation will be so remedied that the Independent Union will be able, if chosen, to act independently as a proper representative for the employees in their collective bargaining. Once the dominating influences were eliminated, in conformity with the Board's orders, the Independent Union could, the facts showed, properly become a candidate for representation. To decree that it forever cease from acting again, despite the possibility of its regaining its complete independence and freedom from domination, would not have granted to the parties remedial relief, but would rather have been punitive in character. In confining its decision to effecting a remedy for the unfair labor practices found to exist by the Board, the lower court acted merely to carry out the policies of the Act as delineated by this court in its opinion in *National Labor Relations Board vs. Fansteel Metallurgical Corp.*, 306 U. S. 240, where it was said:

> "* * * the power to command affirmative action is remedial, not punitive, and it is to be exercised in

aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violations where those consequences are of a kind to thwart the purposes of the Act" (at page 475, 83 L. Ed. advance sheet No. 10).

This court, in its opinion in that case, referred particularly to that portion of the decision in *Consolidated Edison vs. National Labor Relations Board,* 305 U. S. 197, where an order of the Board which invalidated certain contracts between the employer and the Independent Union was found improper. In that case, this Court held that there was no basis to find that the contracts thwarted any policy of the Act, or that their cancellation would in any way make the order to cease the specified unfair labor practices any more effective, and the contracts were accordingly allowed to remain in full force, despite the Board's order to the contrary.

So in the present case the lower court, in accordance with the jurisdiction granted it, and the conceded purposes of the Act, found that to keep the Independent Union from forever being chosen as their bargaining agent by the employees would in no way make the order against the respondent to cease certain specified unfair labor practices any more effective.

The decision below is, therefore, in complete accord with the rulings of this court, and just as this court showed the *Greyhound* cases to be controlled by their own respective state of facts, so is the present case to be controlled by its own and distinguishable state of facts.

It should be noted that, although it is so stated in the Board's petition for writ of certiorari, the lower court here has not denied enforcement of a disestablishment order, as was denied by the Circuit Court of Appeals for the Fourth Circuit in *National Labor Relations Board vs. New-*

port News Shipbuilding & Dry Dock Company, 101 F. (2d) 841, No. 20, this Term.

In the present case the lower court has to the contrary expressly ordered the respondent to withdraw all recognition from the Independent Union, and to post notices that it "has and does completely disestablish such labor organization as representative of its employees" (R. 1213).

No more deadly a blow could be dealt a labor organization than disestablishment, and, surely, by the order of the lower court, all present ties of recognition and bargaining between the Independent Union and respondent are most effectively severed. Any barriers of free choice that may be deemed to have been erected by the employer have been removed and corrected by compliance with the injunctions of the order entered. No question was presented in the lower court and accordingly no question can be presented here on whether or not the board has power to order full disestablishment. The action by the lower court in permitting the Independent Union to appear on the ballot after the employer withdraws all recognition from it, and after the employer has ceased from any interference with or domination over it, was decided entirely in accordance with the facts as deduced through the Board's own investigation, hearings, and findings.

The administrative details of the election are left entirely with the Board. Its findings of unfair labor practices were confirmed and an order enforcing the respondent to abide by them and to abstain from such practices as the Board deemed unfair was entered. The discretion of the Board was not disturbed and its administration of the Act not interfered with. The court merely insured that such election as the Board deems advisable should protect the rights of the employees to exercise that "full freedom of association, self-organization, and designation of repre-

sentatives of their own choosing" which is granted to them under the express terms of the National Labor Relations Act (Section 1). It has ordered that they be allowed true and unrestricted freedom of choice. After those features of the Independent Union which have been found objectionable by the Board have been completely eliminated in accordance with the Board's order, then, and only then, may the employees, by an exercise of their own free choice, choose as their representative that union or whatever other union they deem best will serve their own interests in collective bargaining.

The precise order of the lower court as entered in these proceedings contains the following:

> "*IT IS FURTHER ORDERED* that this court, by this order, *is not approving nor is it disapproving the direction of the National Labor Relations Board in reference to a coming or possible election* by employees to choose their bargaining agency, and this order is not to be construed as approving any future action which does not place upon the ballot the names of *all* labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc" (italics ours).

IV.

CONCLUSION.

We submit that the proceeding as it came before the lower court gave the court the jurisdiction to enter such order as it made; that such order is not in conflict with the position of this court or of any other Circuit Court of Appeals; that it is, on the contrary, in absolute accordance with the purposes and intention of the National Labor Relations Act as indicated not only by the express terms of the Act, but also by the congressional committee hearings here-

inabove cited, and furthermore by the opinions of this Court construing the Act.

The questions urged by petitioner in the present case involve no important procedural difficulty under the Act, but are clearly determined within the express terms of the Act and the decisions of this court construing the Act. The ruling of the lower court is in the present case in no manner conflicting with any decision either of this Court or of any Circuit Court of Appeals, but is controlled solely by its own distinctive set of facts.

It is, therefore submitted that petitioner's petition for a writ of certiorari be denied.

LEON B. LAMFROM,
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Counsel for Respondent,
The Falk Corporation.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 *et seq.)* are as follows:

Section 1. * * * It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organzation or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * * * *

Sec. 9. * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Sec. 10. * * *

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record

in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * *

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1939

No. 460.

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

THE FALK CORPORATION.

BRIEF OF

Independent Union of Falk Employees, Intervener

In Opposition to Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

FRANK P. BURKE,
GILES F. CLARK,
Attorneys for Independent Union of Falk Employees, Intervener.

GILES F. CLARK,
Of Counsel.

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OPINIONS BELOW.

The first opinion of the Circuit Court of Appeals (R. 1198) is reported in 102 Fed. (2) 383. The second opinion (R. 1208) is not yet reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1165-1180) are reported in 6 N. L. R. B. 654.

ARGUMENT.

The Petitioner gives as a reason for granting the Writ of Certiorari in this matter, the fact that the Court below "declined to grant full enforcement of the Board's disestablishment Order." The word is "establishment" in the Petition, but we assume this is a typographical error.

Petitioner takes it for granted that the Court declined to grant the Board's Order disestablishing the Independent Union. We do not agree with the Board in this contention. The Order of the Board specifically referring to the disestablishment is as follows (R. 1180):

> "2 (b) Immediately post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty (30) consecutive days stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that it has withdrawn all recognition from the Independent Union of Falk Employees as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and that it has completely disestablished said organization as such representative;"

The Order of the Court, having to do with disestablishment, is as follows (R. 1211):

> "It is further ordered that the respondent shall post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating that the respondent will and does withdraw recognition of the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment, and that it has, and

does, completely disestablish such labor organization as such representative, and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes."

True, the Court adds to the Order of the Board in this respect the provision that the Company

> "will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes."

This addition, however, can hardly be urged by the Board as a refusal on the part of the Court to grant full enforcement of the Board's disestablishment order.

The Court did not agree with the Board that the Order of disestablishment should be so drastic as to preclude the Independent Union from appearing on the ballot at a future election.

There is strong argument in favor of the Decree of the Court in the language of the Board in its Decision, under the heading, "The Remedy" (R. 1179), where we find this statement:

> "We shall direct that such election be held upon our further order after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order."

If the election is to be held after the Board is "satisfied that the effects of the respondent's unfair labor practices have been dissipated," what possible harm can result in the Independent Union appearing on the ballot?

The Court, then, only modified that part of the Board's decision dealing with the situation after the Independent has been disestablished as the bargaining agent under conditions as the Board found them at the hearing.

A careful reading of the Court's second opinion (R. 1209) does not indicate that the Court was passing upon the "coming election." The Court said (R. 1209):

> "We are, however, not merely passing on the terms of a contemplated or coming election. We have much broader and comprehensive issues to deal with. We are disposing of a labor dispute case wherein the proceedings have gone beyond mere plans by the Board for the calling of an election. We are, upon the Board's petition, disposing of a labor dispute which involved alleged interference on the part of the employer with the selection of the bargaining agent by the employees."

We fail to follow the logic of the Petitioner that the Decree of the Court leaves no doubt that the Board's Direction of Election is reviewed and modified having in mind the Board's Decision (R. 1166), Order (R. 1180) and Direction of Election (R. 1181).

We find that the Direction of Election does not specifically and by direct language preclude the Independent from appearing on the ballot, in any election spoken of in said Direction of Election.

The Board, as part of its Decision, designated as "The Remedy" (R. 1179), did provide:

> "We shall, therefore, order an election to be held among the employees of the respondent, who were in its employ during the pay-roll period immediately preceding our Direction of Election in order to determine the appropriate bargaining unit or units and the representation of employees within such unit or units. We shall direct that such election be held

upon our further order after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order. In such election we shall make no provision for the designation of the Independent on the ballot."

This was, however, in connection with the unfair labor practice hearing.

The lower Court by indicating that the name of the Independent should appear on the ballot in a future election, when ordered by the Board, merely held that the Board was in error when, in connection with its order of disestablishment, it ordered that the Independent should not appear on the ballot.

The Court, having jurisdiction of the question pertaining to the disestablishment order, as a part of the affirmative action ordered by the Board, in connection with the unfair labor practice hearing, had the right to modify that portion of the Order directing that the Independent was to be precluded from appearing on the ballot. In short, the Board's order that the Independent not appear on the ballot at a future election was not made in connection with its Direction of Election, but was made in connection with the unfair labor practice ruling.

Petitioner fails to distinguish between the order issued by the Board resulting from its Findings on the hearing as to unfair labor practice, and the Direction of Election issued as a result of its Finding on the question of representation. Both hearings were consolidated for the purpose of the hearing (Board's Exhibit 2).

The Petition herein, at page 8, refers to the Direction of the Board (R. 1178, 1181 and 1182), as a part of the investigation to ascertain representatives for collective bargaining. We contend and the lower Court apparently so viewed it, that the Direction of the Board (R. 1178) as to

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the Independent not appearing on the ballot dealt with the unfair labor practice hearing, and the Direction of Election dealt with the representation hearing.

The Court, therefore, in its Decree, did not modify the Direction of Election, but did modify the Order issued in the unfair labor practice hearing. The Court was entirely within its jurisdiction in so doing.

Section 9 (d), *National Labor Relations Act.*

If the Decree of the Court be construed as modifying the Direction of Election, as provided by the Board, we respectfully urge that the National Labor Relations Act, Section 9 (d), gives to the Court the right so to do.

In this case the Board had consolidated the representation hearing with the hearing on the unfair labor practices, as provided by Section 9 (c) (Board's Exhibit 2); the testimony was taken pursuant to Section 10 (c), and the Order, made pursuant to Section 10 (c), was based, in part at least, upon facts certified following the investigation pursuant to Section 9 (c). There was, then, the Petition for the enforcement or review of such Order, and by the terms of Section 9 (d), a certification and the Record of such investigation were included in the transcript of the entire Record.

> "The Decree of the Court enforcing, modifying, or setting aside, in whole or in part, the Order of the Board, shall be made and entered upon the pleadings, testimony and proceedings set forth in such transcript" (Section 9 (d)).

So we urge that the Court, under the circumstances, if it did change the Order of Direction of Election, was within its jurisdiction in so doing.

The question as to whether the Act confers jurisdiction upon the Circuit Court of Appeals to review the Direction of Election standing alone, is now before the Court, in *National Labor Relations Board vs. International Brother-*

hood of Electrical Workers, 105 Fed. (2) 598 (C. C. A. 6), Certiorari granted, October 9, 1939, No. 253 this Term.

And, the question of the jurisdiction of the Circuit Court of Appeals to review a certification issued by the Board, is before this Court in the case of *American Federation of Labor vs. National Labor Relations Board,* 103 Fed. (2) 933, Certiorari granted, October 9, 1939, No. 70 this Term, as appears in the Petition herein. Of what assistance will a review in this case be?

The question of the jurisdiction of the Circuit Court of Appeals to review the Direction of Election, according to the Act, is provided in Section 9 (d) of the Act. The Court will have, in the two cases now pending before it, and cited above, the question as to when the Circuit Court of Appeals has jurisdiction to review a Direction of Election, and when the Circuit Court of Appeals has jurisdiction to review a Certification.

Petitioner argues that the Board could not have sought enforcement of its Direction of Election in the Court below since such Direction did not purport to require respondent, or any other person, than the Board's Regional Director, to take or refrain from taking any action.

If, as the Petitioner argues, the language appearing in that part of the Board's Decision, called "The Remedy" (R. 1179), was part of the Direction of Election, we call the Court's attention to the terms of that Direction of Election, wherein it precludes the Intervener, Independent Union, from appearing on the ballot, and the fact that the Board provided (R. 1179):

> "In such election we shall make no provision for the designation of the Independent on the ballot."

Surely, this was an order restraining one of the parties to the hearing from exercising a right, and denying to the

members of the Independent Union, including some eight hundred (800) men (R. 1178), who had designated this organization as its bargaining agent, the fundamental right guaranteed by the National Labor Relations Act to freely choose their own representative for the purpose of collective bargaining.

National Labor Relations Act, Section 7.

The Intervener, Independent Union, was not made a party by the Board, in its Petition to the Court for an order enforcing the Board's Order. The Court below granted the Petition of the Intervener, Independent Union.

The Petition of the Intervener, among other things, set forth the following facts (R. 1196):

> "That it is necessary that the Independent Union of Falk Employees be permitted to intervene, to assure a full and complete hearing of said petition filed by the Board, and for the further reason that the National Labor Relations Board seeks to deny to the members of said Independent Union of Falk Employees rights guaranteed to them by the National Labor Relations Act."

Surely, the petition of the Intervener (R. 1194, 1195, 1196 and 1197) widened the scope of the review to include the Order of the Board precluding the Intervener from appearing on the ballot.

The Decision of the Court below is not in conflict with the case of *National Labor Relations Board vs. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, or *National Labor Relations Board vs. Pacific Greyhound Lines, Inc.*, 303 U. S. 272.

In *National Labor Relations Board vs. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, this Court, at page 262, said:

> "The main question for decision is whether, upon a finding that an employer has created and fostered

a labor organization of employees and dominated its administration in violation of Sec. 8 (1), (2) of the National Labor Relations Act of July 5, 1935 (Chap. 372, 49 Stat. at L. 449, 29 U. S. C. A. Sec. 151 et seq.), the National Labor Relations Board, in addition to ordering the employer to cease these practices, can require him to withdraw all recognition of the organization as the representative of its employees and to post notices informing them of such withdrawal."

And, at page 263, this Court said:

"The Board ordered that respondents cease each of the specified unfair labor practices. It further ordered that they withdraw recognition from the Employees Association as employee representative authorized to deal with respondents concerning grievances, terms of employment, and labor disputes, and that they post conspicuous notices in all the places of business where such employees are engaged, stating that the 'Association is so disestablished from that respondents will refrain from any such recognition thereof' 1 N. L. R. B. 1."

The lower Court in that case struck from the order all provisions requiring the withdrawal by respondents of recognition of the Employees Association and publication of notice of withdrawal.

The lower Court was of the opinion that the Board was without authority to order the employers to withhold recognition from the Association, without notice to it and opportunity for a hearing, and without an election by the employees to choose a labor organization to represent them.

This Court, at page 271, stated:

"There was ample basis for its conclusion that withdrawal of recognition of the Association by respondents, accompanied by suitable publicity, was an appropriate way to give effect to the policy of the Act."

We call the Court's attention to the Decree of the lower Court in the instant case, wherein almost the same provisions are made (R. 1211).

In *National Labor Relations Board vs. Pacific Greyhound Lines, Inc.*, 303 U. S. 272, this Court, at page 273, stated:

> "The only question requiring separate consideration is whether, in a case in which the National Labor Relations Board has ordered respondent to cease certain unfair labor practices, including the domination and financial support of a company union, these facts justify its further order that respondent withdraw all recognition of the union and give appropriate notice of the withdrawal to employees."

The question of the right of the Board to order an employer to cease the continued recognition of an agency found to have been dominated or supported by it was the one decided in this case.

Both these *Greyhound* cases are vastly different from the situation in the instant case.

The lower Court, in this case, actually ordered the employer to cease and desist from the practice complained of, to withdraw all recognition of the Independent Union as the representative of all or any of its employees, and to post notices to that effect (R. 1211).

The lower Court here granted all the relief sought in the *Greyhound* cases, but provided that in any election to be held in the future the employee should be free to choose any bargaining agent that he desires, including the Independent Union. All, we think, in conformity with the statement of policy as found in *National Labor Relations Act*, Section 1.

We concede that the Board has the power to order such affirmative action as will effectuate the purposes of the Act, but, as stated by this Court, in *National Labor Relations Board vs. Fansteel Metallurgical Corp.*, 306 U. S. 240:

> "The authority to require affirmative action to 'effectuate the policies' of the Act is broad but it is not unlimited. It has the essential limitations which inhere in the very policies of the Act which the Board invokes."

The lower Court here did not substitute its judgment for that of the Board, as to the appropriate remedy. It held the Board to be in error in attempting to preclude the Independent from appearing on the ballot at a future election, and the Court clearly had that right under the Act, Section 9 (d), and under the Decisions of this Court.

CONCLUSION.

We respectfully submit that the Petition for a Writ of Certiorari herein should be denied.

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APPENDIX.

The pertinent provisions of the *National Labor Relations Act* (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 et seq.) are as follows:

FINDINGS AND POLICY.

"Section 1. • • •

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

"Section 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to Section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

• • • • • • •

"Section 9. • • •

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or

selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to Section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript."

"Section 10. • • •

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaged in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person and order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. • • •

• • • • • • •

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor

practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board." • • •

FILE COPY

No. 460

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CHARLES ELMORE CROPLEY
CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

THE FALK CORPORATION.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR THE FALK CORPORATION.

LEON B. LAMFROM,
A. J. ENGELHARD,
Counsel for Respondent,
The Falk Corporation.

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In The

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ATIONAL LABOR RELATIONS BOARD, Petitioner,

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THE FALK CORPORATION.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR THE FALK CORPORATION.

OPINIONS BELOW.

The first opinion of the Circuit Court of Appeals for e Seventh Circuit (R. 1198-1206) is reported in 102 F. d) 383, and the second opinion (R. 1208-1212) is reported 106 F. (2d) 454.

JURISDICTION.

The decree of the Circuit Court of Appeals was entered ly 13, 1939. No stay of the decree, or any part thereof, s asked by the petitioner. The petition for a writ of

certiorari was filed October 12, 1939, and was granted November 13, 1939. The petitioner has invoked the jurisdiction of this Court under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act (49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 151 *et seq.*) are set forth in the Appendix.

QUESTIONS PRESENTED.

1. Whether the Circuit Court of Appeals exceeded the jurisdiction granted by Section 10 (e) in adding to the unfair labor practice order of the Board, the explanatory language objected to by the Board.

2. Whether the Circuit Court of Appeals, if it should be determined that the decree invalidated or modified the direction of election, had jurisdiction so to do under Section 9 (d) of the Act.

3. Whether the Board has the power in enforcing Section 8 of the Act to divest employees of the rights guaranteed to them under Section 7 of the Act.

STATEMENT OF THE CASE.

On May 28, 1937 (R. 19), there was received in the Regional Office of the National Labor Relations Board for the Twelfth District, a charge (R. 18-19) of unfair labor practices against the respondent, which was filed by the Amalgamated Association of Iron, Steel and Tin Workers

of North America, Lodge No. 1528 (hereinafter called the Amalgamated or C. I. O.), a labor organization.

The charge accused the respondent of engaging in unfair labor practices within the meaning of Section 8, Subsections (1), (2) and (3) of the National Laor Relations Act (hereinafter called the Act).

On June 8, 1937, the Regional Director requested the respondent to have no further dealings with the local union known as The Independent Union of Falk Employees, pending the outcome of the hearing (R. 89, 1044) to be held on the charges filed. To this the respondent agreed (R. 1045) (R. 1071). This agreement the respondent has fully kept in all respects (R. 89).

On August 2, 1937, the Amalgamated filed amended charges (R. 20-21), and, among other things, included, in addition to the charges contained in the original charge, an accusation that the respondent had refused to bargain collectively with the Amalgamated, in violation of Subsection (5) of Section 8.

On the same day, the Amalgamated filed a "Petition for Investigation and Certification of Representatives" (R. 13-14) under Section 9 (c) of the Act.

On August 4, 1937, the Regional Director for the Twelfth Region issued the unfair labor practice complaint (R. 20-21) based upon the amended charges filed on August 2, 1937.

The respondent duly interposed its answer (R. 21-25) to the unfair labor practice complaint.

Thereafter, the Board ordered the unfair labor practice proceeding against the respondent under Section 10 and the representation proceeding under Section 9 (c) to be consolidated for the purpose of hearing (Board's Exhibit 2, not printed but on file with the Clerk).

At the opening of the hearing, The Independent Union of Falk Employees was permitted to intervene (R. 29).

At the opening of the hearing, the complaint case, known as Board's case No. XII-C-57, and the representation case, known as Board's case No. XII-R-85, were considered as one proceeding, based upon the petition and charges filed by the Amalgamated (R. 28).

The consolidated hearing was held from August 16th to August 25th, 1937 (R. 2).

In addition to the Board, the respondent, and The Independent Union of Falk Employees, The International Union of Operating Engineers, Local 311, participated in the hearing, by counsel (R. 26).

The petition for intervention of The International Union of Operating Engineers, Local 311, however, was subsequently dismissed by the Board (R. 1168).

On November 2, 1937, the Trial Examiner filed his Intermediate Report in both cases (R. 1136-1152).

On April 18, 1938, the Board made its decision, order and direction of election (R. 1165-1182).

On June 30, 1938, the Board filed its petition (R. 1-5) for enforcement of its order in the Circuit Court of Appeals. In its petition, the Board asks "for the enforcement of a certain order issued by the Board in a proceeding by it against the respondent, The Falk Corporation." The Board then describes the proceeding as shown upon its record as cases No. R. 278 and No. C. 293, being respectively the representation case and the unfair labor practice case, and states that the title of the one proceeding involving both cases is "In the Matter of The Falk Corporation and the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 1528 (R. 1). It then proceeds to state in its petition that both cases were consolidated for purpose of hearing (R. 2), and that the right to intervene was granted The Independent Union of Falk Employees (R. 2). It further states in its petition that the consolidated

hearings in both cases were held between August 16th and August 25th, 1937 (R. 2).

It further states in its petition (R. 3) that on April 18, 1938, the Board stated its Findings of Fact and Conclusions of Law, and made its decision, order and direction of election in said *proceeding*.

Among other provisions of the order of the Board for which it sought enforcement was the provision:

> "3. The complaint is hereby dismissed * * * (2) insofar as it alleges that the respondent has engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act." (R. 4)

In the last two paragraphs of its petition for enforcement, the Board states that, pursuant to *Sections 10 (e) and 9 (d)* of the Act, it is certifying and filing with the Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, order and direction of election of the Board (R. 4); and, requested the Court to "take jurisdiction *of the proceedings* and *of the questions* determined therein, and make and enter upon the *pleadings, testimony and evidence* and the *proceedings set forth in the transcript* and upon the order made thereupon, a decree enforcing in whole said order of the Board and require respondent and its officers, agents, successors and assigns to comply therewith" (R. 5). (italics supplied)

The respondent, on July 19, 1938, filed its answer (R. 6) with the Circuit Court of Appeals, in which, among other things, it alleged that the Board's order of April 18, 1938, was and is contrary to law, for the reason that the Board's conclusions of law, upon which the order was based, are erroneous.

On August 31, 1938, The Independent Union of Falk Employees filed its petition for intervention in the pro-

ceedings pending in the Circuit Court of Appeals (R. 1194), which petition, among other things, stated that the Independent "has not been made a party to the proceeding before the above-named Court, to enforce the Order of the National Labor Relations Board"; "That substantial rights of the Independent Union of Falk Employees will be affected by the Order of this Court enforcing the said Order of the National Labor Relations Board"; "That it is necessary that the Independent Union of Falk Employees be permitted to intervene, to assure a full and complete hearing of said petition filed by the Board, and for the further reason that the National Labor Relations Board seeks to deny to *the members* of said Independent Union of Falk Employees rights guaranteed to them by the National Labor Relations Act" (R. 1196) (italics supplied).

It concluded its petition with a prayer "that this Court make an order granting it leave to intervene herein, as a party, and for such other and further relief as to this Court seems just" (R. 1196-1197).

On October 1, 1938, the Circuit Court of Appeals ordered that The Independent Union of Falk Employees "be, and they are hereby granted leave to intervene in this cause" (R. 1197).

On March 7, 1939, the lower Court filed its decision (R. 1198-1206) (102 F. (2d) 383).

In its decision (R. 1206) and at page 390 of the official report (102 F. 2d), the Court said:

> "It is hardly necessary for us to observe that our opinion is not to be construed as denying to the employee the right to organize or join an independent union as readily as an organized union. The employees must be perfectly free at all times, and this means *in the future*, to select the union they prefer."

On March 7, 1939, the lower Court entered an order granting the enforcement of the Board's order of April 18, 1938 (R. 1207).

On May 23, 1939, the lower Court held a hearing on the form of decree to be entered (R. 1207-1208). At that time, leave was granted the Board to file, within five days, additional suggestions and for the respondent to file, within five days thereafter, a reply thereto (R. 1208).

On July 13, 1939, the lower Court filed its opinion in the matter entitled "On Objections of the Board to the Entry of the Final Decree as drafted by the Board" (R. 1208-1212) (106 F. (2d) 454).

On the same day, there was entered of record the final decree (R. 1212-1214).

The provisions of the Board's order (R. 1180-1181), and the provisions of the final decree of the Court (R. 1212-1214), when juxtaposed, show in what respect the Court modified the Board's order, and, as so modified, decree enforcement thereof.

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board	
hereby orders that the respondent, The Falk Corporation, and its officials, agents, successors, and assign shall:	It is hereby ordered that the Falk Corporation, respondent herein,
1. Cease and desist:	Cease and desist from
(a) From dominating or interfering with the formation or administration of the Independent Union of Falk Employees, or any other	(a) dominating or interfering with the formation or administration of the Independent Union of Falk Employees or of any other labor organi-

labor organization of its employees, and from contributing support to the Independent Union of Falk Employees or to any other labor organization of its employees;

zation of its employees and from contributing financial or other support to said Independent Union or any other labor organization;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

(b) from interfering with, intimidating, restraining, coercing, or endeavoring to coerce, its employees in their right to form, join, or assist, any labor organization or in exercising their right to freely and collectively bargain through representatives of their own choosing, or to freely engage in concerted activities for the purposes of collective bargaining.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

It is further ordered that said respondent

(a) Withdraw all recognition from the Independent Union of Falk Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment,

withdraw recognition of the Independent Union as the representative of all or any of its employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages, or rates of pay, hours of employment, and other conditions of employment of labor; **provided, however, that the said employees shall remain free to choose at the coming election, or any future election**

held or conducted pursuant to the provisions of the National Labor Relations Act, the Independent Union to represent them in labor relations dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and that the said respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union (bold supplied).

and completely disestablish the Independent Union of Falk Employees as such representative;

It is further ordered that respondent shall

(b) Immediately post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty (30) consecutive days stating

(1) that the respondent will cease and desist in the manner aforesaid, and

post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating

(2) that it has withdrawn all recognition from the Independent Union of Falk Employees as the representative of its employees for

that the respondent will and does withdraw recognition of the Independent Union of Falk Employees as representative of its employees for the purpose

the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment

and that it has completely disestablished said organization as such representative;

of dealing with the respondent concerning grievances, labor disputes, wages or rates of pay, hours of employment and other conditions of employment, and that it has, and does, completely disestablish such labor organization as such representative,

and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes.

It is further ordered that the respondent

(c) Notify the Regional Director for the Twelfth Region in writing within 10 days from the date of this Order what steps it has taken to comply herewith.

notify the Regional Director for the Twelfth Region in writing what steps it has taken to comply with this order, within forty days from the date of this order or in case application is made to the United States Supreme Court for a writ of certiorari, within thirty days from the date the Supreme Court affirms the decree or denies the writ, if it takes either action.

It is further ordered

that this court, by this order, is not approving nor is it disapproving the direction of the National Labor Relations Board in reference to a coming or possible election by em-

> ployees to choose their bargaining agency, and this order is not to be construed as approving any future action which does not place upon the ballot the names of all labor agencies or unions which are seeking the votes of the employees to represent them in collective bargaining with respondent over labor disputes, wages, etc. (bold supplied).

INACCURACIES CONTAINED IN PETITIONER'S BRIEF IN ITS STATEMENT OF THE CASE.

On page 5 of petitioner's brief, counsel for the petitioner state that they will make a brief summary of the Board's findings of fact. Certain of the summarized findings of fact contained in the petitioner's brief are misleading; others are highly colored; other are inaccurate. We respectfully refer the Court to the findings of fact of the Board as they are set forth on pages 1170 to 1175 of the transcript, to which pages petitioner's counsel have referred in stating the summary of the facts found by the Board in its decision of April 18, 1938. Fearing, however, that our silence may be construed as assent to the correctness of some of the more glaring inaccuracies, we comment on those which tend to give the respondent's activities a color not given, or intended to be given by the Board's actual findings.

On page 6 of petitioner's brief, it is stated:

> "Harold Falk clearly indicated to the representatives that they were expected to form a new unaffiliated organization."

But, the Board found (R. 1171):

"On April 8, 1937, the Works Council held its last meeting at which meeting Harold Falk was present. There is testimony that he told the employees that they could form an independent union and that they could meet on the respondent's property to make arrangements for forming it, but that they would have to meet off the respondent's property after it was formed."

On page 6 of petitioner's brief, it is stated:

"A number of the representatives on the company-dominated Works Council proceeded to form the Independent, thus carrying out Falk's desire that they form a new inside organization."

But, the Board made no such finding. The Board found (R. 1172):

"On April 12, 13, and 14, 1937, a group of past and present Employee Representatives on the Works Council held four meetings in the basement of the plant hospital during working hours and discussed the formation of an inside union."

The Board did not find that those meetings were held to "carry out Falk's desire that they form a new inside organization."

On pages 6 and 7 of petitioner's brief, it is stated:

"Respondent's personnel manager delivered notices of the first meeting, held on April 12; he regarded this function as 'business connected with the company.'"

The Board found (R. 1172):

"Hydar, the personnel manager of the respondent, was instrumental in notifying employees of the meeting held on April 12. He did not remember who had asked him to notify these employees, but was certain that the person who had made the request was an employee."

The Board made no finding that Hydar regarded this function as "business connected with the company."

Counsel's statement in footnote No. 6, on page 7, illustrates the failure of counsel to stay within the record of the findings made by the Board. The Board made no finding based upon the testimony referred to in footnote No. 6.

On page 7 of petitioner's brief, it is stated:

> "The meeting was held on company property during working hours and those who attended were paid by respondent for the time spent at this meeting, as well as at later meetings."

The Board did find (R. 1172) that four meetings were held on respondent's premises during working hours, but the Board made no finding regarding payment for time spent at the meetings. Nowhere in its findings does it refer to that transaction, apparently because the Board accepted the explanation that payment was made due to routine practice, and that when the fact of payment came to the attention of respondent's management, the payments were subsequently deducted (R. 929-930). The incorporation of the wholly gratuitous statement in footnote No. 7 as a finding of the Board is unjustified. Counsel for the Board thus attempt to amend the findings of the Board and bring to the attention of this Court matters wholly disregarded by the Board itself.

On page 7 of petitioner's brief, it is stated:

> "Falk had previously announced, at the meeting where the dissolution of the Works Council was proclaimed to the representatives, that there would be a general wage increase on June 1 *if no outside union intervened.*" (Italics supplied)

The Board made no finding comparable with the latter part of the quoted statement. The Board found (R. 1171):

"He (Falk) also admitted that at that meeting he had told the men that a raise which had been agreed on between the respondent and the Works Council to become effective June 1, 1937, would stand as long as the Works Council stood, but that, if another group came into being, the arrangements would be cancelled and new negotiations would have to be entered into with the new group."

On page 8 of petitioner's brief, it is stated:

"The details of organization of the Independent were likewise arranged under respondent's supervision."

No such finding was made by the Board. The Board found (R. 1172):

"On April 13, the men again sent for Harold Falk. He was not in the plant, but his son, Richard, addressed the meeting as did Connell, a vice president of the respondent. Connell told the men that his interpretation of the Wagner Act was that the respondent could not help the men either financially or in an advisory capacity. The meeting was then adjourned."

On page 8 of petitioner's brief, it is stated:

"Responsible officials of respondent addressed a meeting at which the details were considered and gave plentiful advice."

The Board made no finding in that respect, except the finding (R. 1172):

"Harold Falk was called into the meeting on April 12. He testified that he gave his impressions of the Wagner Act to the men as 'near as he could.'"

and the finding, as has been previously indicated, with regard to Connell.

On page 8 of petitioner's brief, it is stated:

"Falk urged haste in formation of the new organization and insisted that it be incorporated."

No such finding was made by the Board. The Board did say, as a recital, but not as a finding (R. 1172):

> "There is also evidence that he (Falk) told the men that they would have to incorporate as quickly as possible because the C. I. O. was working in the plant, which statement was denied by Falk. *At any rate,* the men held another meeting at which it was decided to secure the services of an attorney." (Italics supplied)

The Board plainly indicated by the expression "at any rate" that it would not state whether Falk made the statement or did not. The Board suspended its decision on that point, being satisfied that it need not adopt either version of the testimony.

On page 8 of petitioner's brief, it is stated:

> "Under the guidance of this attorney, the Independent was incorporated in accordance with Falk's demand, although incorporation had been rejected both by the committee of organizers and by the rank and file at the first organizational meeting."

No such finding was made by the Board (R. 1173):

> "When the meeting had been adjourned, three employees, who had attended it, discussed incorporation of the Independent with the attorney. They were joined by another employee, who said that, if he could get two other signers, he would go to the attorney's office next day and sign articles of incorporation. One of those present admitted, at the hearing, that the reason the Independent is a corporation today is because of 'a little intimate talk' between three employees and the attorney."

The Board found further (R. 1174):

> "The next day, April 19, 1937, the three employees, who had attended the meeting on the previous day, went to Burke's (the attorney) office and signed the articles of incorporation, although they had not been given authority to do so."

Nowhere did the Board make a finding that anything was done with regard to the incorporation of the Independent because of any demand by Falk.

The strongest language used by the Board is found in its argumentative summary (R. 1176), where it said:

> "With the form of the Independent perfected in accordance with its desires, the respondent recognized it as the bargaining agent for all its employees on the mere statement of its incorporators that it represented a majority of such employees, without requiring any other proof of a majority."

On page 9 of petitioner's brief, it is stated:

> "However, respondent set out to build up a majority for the Independent by a campaign of coercion directed against the two 'outside' unions and in favor of the Independent. On Company time and property high supervisory employees bitterly disparaged the Amalgamated and compared it unfavorably with the Independent; at least one even openly solicited on behalf of the Independent."

The above quotation is an excellent example of overzealousness on the part of petitioner's counsel. They misquote and garble the Board's findings of fact.

The Board found (R. 1174):

> "During March, April, and May 1937, both the Amalgamated and the Independent conducted an intensive campaign for members, at times doing so during working hours. Some of the foremen, in discussions with the men, expressed their hostility to the C. I. O. and told them that an inside union would be better for them. At the hearing, the foremen testified that the management had ordered them not to express opinions on the subject, but admitted that they had expressed their opinions in 'friendly' talks with the men."

On page 9 of petitioner's brief, it is stated:

"And, Falk, through a series of grossly coercive interviews with the powerhouse employees, effectively destroyed the majority there claimed by the Operating Engineers."

The Board found (R. 1174):

"After the conference he (Falk) interviewed the men individually to ascertain how many desired to be represented by the Operating Engineers. At the hearing Falk testified that he may have expressed an opinion unfavorable to the Operating Engineers, when talking to the men at that time."

The Board found further relative to Falk's interviews with the powerhouse employees (R. 1175):

"On April 28, 1937, counsel for the Operating Engineers accused Falk of coercing these employees. After this accusation, Falk called the powerhouse employees to his office individually to find out whether or not they had been intimidated by his former conversation with them. Although several of the powerhouse employees assured Falk in these individual conversations and later testified at the hearing that they were not intimidated by the conversations or letter, it is significant that no one appeared at the next meeting of the Operating Engineers held on April 18, 1937. Letters of withdrawal, which were prepared in the office of the attorneys for the Independent, were subsequently received about May 6, 1937, by the Operating Engineers from five of the engineers."

The footnote on page 9 of petitioner's brief is not a finding of fact, but is purely an argumentative conclusion by counsel.

On page 10 of petitioner's brief, counsel state:

"Having caused the Independent to be established, respondent led the employees, by bribes, threats, and illegal use of the powerful weapon of

> recognition, away from the *bona fide* labor unions and into the Independent."

The language is a distortion of the truth. There is not a scintilla of evidence in the entire record of bribes being offered by the respondent to anyone. We challenge counsel to produce one instance of bribery. Nor is there any evidence of threats. The Board made no finding of bribery or of threats, and for counsel to make such a statement, without any evidence to support it, much less state that the Board found that there was bribery and there were threats, when, in fact, the Board made no such finding, is a gratuitous insult to the managerial forces of respondent.

The lower Court, after reviewing (R. 1201-1204) the alleged acts by the respondent's managerial forces as indicative of an intent to prevent the free exercise of the employees' right to organize for collective bargaining, stated (R. 1204):

> "We are satisfied that some of these charges were explained satisfactorily by the respondent. Others, standing alone, afford no support for the Board conclusions, if true. * * *
>
> "* * * we can see nothing to criticize in Mr. Falk's action expressing a preference for a local over an outside union. Especially is this true, where the employee asks the employer for advice. There is much evidence in this record which is indicative of a very wholesome cooperative spirit existing between management and employees. Surely, it is desirable and bespeaks the confidence of employees in the management to have the old employees ask the executive officers of the employer to express his views and his labor union preference."

Counsel for the Board will concede that the respondent posted the following notice in conspicuous places throughout its Milwaukee plant, on August 14, 1939, and maintained such notices for a period of thirty (30) consecutive days:

"*THE FALK CORPORATION*
HEREBY GIVES NOTICE

(1) That *THE FALK CORPORATION* will and does withdraw recognition of *THE INDEPENDENT UNION OF FALK EMPLOYEES* as the representative of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment; and,

(2) That *THE FALK CORPORATION* has and does completely disestablish *THE INDEPENDENT UNION OF FALK EMPLOYEES* as such representative; and,

(3) That *THE FALK CORPORATION* will not recognize *THE INDEPENDENT UNION OF FALK EMPLOYEES* until and unless the employees of *THE FALK CORPORATION* freely and of their own choice select *THE INDEPENDENT UNION OF FALK EMPLOYEES* as their representative to so deal with *THE FALK CORPORATION* concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment.

THE FALK CORPORATION

Harold S. Falk—Vice Pres.—Wks. Mgr.

August 12, 1939."

Counsel for the Board will likewise concede that the Regional Director for the Twelfth Region was notified, in writing, by the respondent of the steps it had taken to comply with the final decree, and that such notification was made within forty (40) days from the date of the order; said notification being as follows:

"August 15, 1939

Mr. John G. Shott,
Regional Director, Twelfth Region,
National Labor Relations Board,
623 North Second Street,
Milwaukee, Wisconsin.

Re: National Labor Relations Board, petitioner, vs. The Falk Corporation, respondent—U. S. Circuit Court of Appeals, Seventh Circuit. No. 6707. October Term, 1938. April Session, 1939.

Dear Sir:

As attorneys for The Falk Corporation, respondent in the above entitled cause, we wish to notify you, on behalf of The Falk Corporation, that The Falk Corporation has taken the following steps to comply with the order of the court dated July 13, 1939.

On August 11, 1939, we, as attorneys for The Falk Corporation, by registered mail, return receipt requested, sent to Alexander, Burke & Clark, attorneys for The Independent Union of Falk Employees, a letter together with a copy of the notice of The Falk Corporation dated August 12, 1939, copies of which letter together with the attached notice are herewith enclosed.

On August 14, 1939, the said notice was posted on the official bulletin board of The Falk Corporation, and each of the following named departments of The Falk Corporation, and will continue to remain posted for a period of at least thirty days from August 14, 1939:

1. General Office
2. Drafting Room
3. Welding Department
4. Pattern Shop
5. Power House
6. Assembly Shop
7. Foundry
8. Machine Shop

We are thus notifying you, on behalf of The Falk Corporation, in accordance with said order of the court of July 13, 1939.

Respectfully yours,

LAMFROM, TIGHE, ENGELHARD & PECK,

By LEON B. LAMFROM,

Attorneys for The Falk Corporation, respondent.

LBL:T
Enc.
Registered
Ret. Rec. Req."

Counsel for the Board will likewise concede that the petitioner did not apply to the Circuit Court of Appeals or to this Court for an order staying the posting of the notices required by the final decree.

ARGUMENT

I.

A.

The Circuit Court of Appeals had Jurisdiction to Modify the Unfair Labor Practice Order of the Board, Because of the Provisions of Section 10 (e) of the Act.

The lower court entered a form of decree by the terms of which the provisions of the Board's order are substantially enforced (*supra*, pp. 7-10). The lower court, however, added to the order of the Board explanatory provisions which we do not consider to be a modification of the Board's order in any respect, but were for the sole and only purpose of protecting, on the one hand, the rights of the respondent's employees, which are guaranteed by Section 7 of the Act, and, on the other hand, to delimit to the respondent the re-

spondent's obligations under the provisions of the decree, which were in harmony with the provisions of the Board's order. The Board had ordered, among other things, that the respondent take affirmative action, namely, to withdraw all recognition from the Independent Union of Falk employees as a representative of any of its employees for the purpose of dealing with the respondent, concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment; and completely disestablish the Independent Union of Falk employees as such representative. Furthermore, the Board's order required of the respondent that it post notices in conspicuous places throughout its Milwaukee plant, and maintain such notices for a period of thirty consecutive days, stating, among other things, that it has withdrawn all recognition from the Independent Union of Falk employees as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment; and, that it has completely disestablished said organization as said representative.

When the entire record came before the Circuit Court of Appeals for the purpose of having that court enforce the order of the Board, Section 10 (e) provided that court has exclusive jurisdiction. In exercising its exclusive jurisdiction, Section 10 (e) provides that the court "shall have jurisdiction of the *proceeding* and of the *question determined therein* • • • and to make an enter upon the pleadings, testimony, and proceedings set forth in such transcript, a decree enforcing, *modifying, and enforcing as so modified,* or setting aside, in whole or in part, *the order of the Board*" (italics supplied).

It was apparent to the lower court, upon the argument and hearing in connection with the court's proposed final decree, that the Board interpreted the provision for dises-

tablishment of the Independent Union as the equivalent of its complete disablement, for all times, to act as the collective bargaining agency of the respondent's employees, even after all domination by the respondent had ceased. The lower court, therefore, was confronted with "the question determined" whether in putting the respondent under the restraint of an injunction, the provisions of such injunction would inform the respondent as to its duties in the future, the immediate future or the distant future, and whether, such restraint put upon the respondent, with the interpretation given to the word "disestablishment" that the Labor Board contended for, would destroy the rights of the members of the Independent to exercise freely their choice of a bargaining agent. The lower court, therefore, concluded to make a final decree which would protect, in the first instance, the rights of the employees to choose the Independent after it had been purged of all unlawful influence of the respondent, and, in the second instance, in specific language, made it known to the respondent that if and when the Independent Union had been chosen the collective bargaining agent of the respondent's employees, that then the respondent could not, because of the injunctional provisions of the final decree, refuse to recognize the Independent as the lawful collective bargaining agent of its employees.

The effect of the provision of the final decree, which the petitioner claims modified its direction of election, was the withdrawal of all recognition from the Independent as a collective bargaining representative of all or any of the respondent employees, and the disestablishment of the Independent as a collective bargaining agency, until such time, as the Independent might be chosen in an election held under the auspices of the Board; but, with the *condition precedent*, for the validity of such an election, that the employees be uninfluenced and not coerced in the elec-

tion by the respondent, and, that the respondent refrain from exercising any influence or coercion over the employees in their selection of the Independent Union.

The lower court, therefore, took literally the suggestion of the Board (R. 1179) that "we shall direct such election to be held upon our further order after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order." In order to completely satisfy the Board's desire in the matter, and not to go counter to the Board's wishes in the matter, the court made it a condition precedent to a valid selection of the Independent as a collective bargaining agent in any election to be held in the future, that the employees be uninfluenced and not coerced in their choice of a collective bargaining agency, and put the respondent under an injunction restraining all interference.

The court surely had the discretion, sitting as a court of equity, and pursuant to the jurisdiction conferred upon it by Section 10 (e), to modify the order of the Board. In the light of the restraint by injunction it placed upon the respondent from the date of the entry of its order, that is to say, from the date of the entry of its final decree, the positive duty to refrain from all acts of influence or coercion over its employees had the positive effect that if the respondent failed to obey the injunction of the court, it would be subject to fine, and the responsible officer would be subject to fine or imprisonment. The court had the right to assume that the injunctional restraints placed upon the respondent and its managerial officers would have the necessary result that no further influence or coercion or restraint would be directed against the employees in violation of the provisions of the Act. If that assumption by the court is given weight, then it must follow that in any future election the choice of the employees of a collective bargaining

agent must necessarily be uninfluenced and uncoerced and unrestrained by any act on the part of the respondent. The next result is inevitable, namely, that if the employees should choose the Independent, they would, in making such choice, be exercising the freedom the Act seeks to protect without interference with that freedom by either the employer, the court or the Board.

Congress gave to the Circuit Court of Appeals the power to modify the orders of the Board. It did so advisedly, and, in doing so, it bound the court as to one matter only, namely, it limited the court to the facts which the Board found, in that it provided, that "the findings of the Board as to facts, if supported by evidence, shall be conclusive" (Section 10 (e)).

Had Congress not intended to confer upon the court the power to modify the orders of the Board so that complete justice be done to all parties affected, either directly or indirectly by the orders of the Board, it would not have granted the power to the court of "modifying and enforcing as so modified" the order of the Board.

B.

If the Jurisdiction of the Lower Court to Modify the Board's Order is not to be Found in Subsection 10 e) then that Jurisdiction to Modify the Order of the Board Insofar as it Affects the Question of Whether the Independent shall be on the Ballot, if and When There is an Election, can be Found by Combining the Provisions of Section 10 (e) with the Provisions of Section 9 (d).

Section 9 (d) of the Act is as follows:

"Whenever an order of the Board made pursuant to Section 10 (c) is based, in whole or in part, upon *facts certified following an investigation* pursuant to Subsection (c) of this section, and there is a petition for the enforcement or review of *such order*,

such *certification*, and *the record of such investigation* shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside, in whole or in part, *the order* of the Board, shall be made and entered upon the pleadings, testimony and proceedings *set forth in such transcript*" (italics supplied).

The order of the Board dated April 18, 1938 (R. 1180-1181) is based in part upon facts certified following an investigation pursuant to subsection (c) of Section 9 of the Act; and, in its support of the petition for enforcement of its order (R. 1-5), the Board included the certification of facts and the record of investigation in the transcript of the entire record, filed under subsection 10(e) and 9 (a) (R. 4). The Board, therefore, conceded the interrelationship between the unfair labor practice case and the representation case. In its petition (R. 1) the Board stated that it "respectfully petitions this Honorable Court for the enforcement of a certain order issued by the Board in a proceeding by it against respondent, the Falk corporation. Said proceeding is known upon the records of the Board as cases Nos. R-278 and C-293, the title thereof being, 'In the Matter of the Falk Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1529.'"

We shall briefly summarize the facts which show the interrelationship between the controversy set forth in the representation case and in the unfair labor practices case:

On August 2, 1937 (R. 13-14) the Amalgamated filed a "Petition for Investigation and Certification of Representatives," under Section 9 (c) of the Act.

In that petition the Amalgamated stated, in substance, that out of 1600 employees of the respondent, the petitioning Amalgamated Union represented in an appropriate unit, consisting of production employees, approximately

1400 of such production employees; that the Independent Union of Falk employees claimed to represent employees in the same bargaining unit, but that the Independent was a labor organization created in violation of Section 8 (2) of the Act (R. 13); that request is made that the Board, pursuant to Section 9 (c) investigate "such controversy" and certify to the parties the name of the representative that has been designated or selected by the respondent's employees (R. 14).

On the same day, August 2, 1937, the Amalgamated filed an amended charge (R. 21) in which, by reason of the amendment, there was added the additional charge that the respondent engaged in an unfair labor practice within the meaning of subsection 5 of Section 8 of the Act, that is, that the respondent refused to bargain collectively with the representatives of its employees, subject to the provisions of Section 9 (a) of the Act.

On August 4, 1937 (R. 20-21) the Regional Director for the Twelfth Region issued the unfair labor practices complaint based on the amended charges filed by the Amalgamated on August 2, 1937, and in reference to the violation of subsection 5 of Section 8 of the Act, the complaint alleged facts raising the identical questions of fact, which were to be investigated and certified in the representation proceeding commenced by the filing of the "Petition for Investigation and Certification of Representatives," filed on August 2, 1937, by the Amalgamated.

In Paragraph 4 (R. 15), the complaint stated, in substance, that the production employees were an appropriate unit; in paragraph 5 (R. 16) it is stated that the Amalgamated has been designated by a majority of the production employees as their representative for purposes of collective bargaining; that such designation was made by the employees signing application cards, and membership in the Amalgamated; that by virtue of Section 9-A the "Union

is and has continuously been the exclusive representative of all employees in said unit for the purpose of collective bargaining. * * *"

In Paragraph 6 of the complaint (R. 16) it is stated that respondent at various times, when requested by the union, has refused to bargain collectively with the union as exclusive bargaining agency for all of its employees in the appropriate unit, which refusal was an unfair labor practice within the meaning of Section 8, subsection 5 of the Act.

In Paragraph 10 of the complaint (R. 17) it is alleged that "By the refusal to bargain collectively" together with other acts, "and each of them" the respondent did interfere with, restrain, and coerce its employees in the exercise of their rights guaranteed in Section 7 of the Act, and has violated Section 8, subsection 2 of the Act.

In respondent's answer to the complaint (R. 21-24) issue was joined on the matter of the appropriate unit, by the denials in Paragraph 4 of the Answer, wherein it was denied that the unit described in Paragraph 4 of the complaint would insure the employees of respondent the full benefit to the right of self-organization and to collective bargaining; and denied that said unit would otherwise effectuate the policies of the Act; and denied that such unit was an appropriate unit for purposes of collective bargaining.

In Paragraph 5 of the Answer (R. 22) respondent denied that the majority of the production employees had designated the Amalgamated as their representative for purposes of collective bargaining with the respondent; denied that such designation had been made by the signing of application cards, and membership in the Amalgamated; denied that by virtue of Section 9 (a) the Amalgamated "is and has been" continuously exclusive representative of all

employees in the said unit for purposes of collective bargaining.

In Paragraph 6 of the Answer (R. 22) respondent denied that it ever was requested to recognize the Amalgamated as exclusive bargaining agency; denied it ever refused to bargain collectively with the Amalgamated as exclusive bargaining agency; denied that the employees in the said unit constitute an appropriate bargaining unit; denied that respondent had violated subsection 5 of Section 8 of the Act; and stated affirmatively "that it has and is now bargaining collectively with such collective bargaining agency which had exclusive legal right under the provisions of the National Labor Relations Act to bargain collectively."

In Paragraph 10 of the Answer (R. 24) respondent denied, among other things, "that it refused to bargain collectively with the lawfully designated representatives of its employees."

On August 4, 1937 (R. 10) the Regional Director of the Twelfth Region caused to be served upon the respondent, the Amalgamated, and the Independent Union of Falk employees, a notice of hearing (R. 9-10) to which notice there were attached a copy of the petition for investigating the controversy regarding representation, a copy of the complaint, and copies of the original and amended charges. The notice provided for a consolidated hearing of the representation controversy and the unfair labor practices complaint, to begin August 16, 1937.

The Board ordered the consolidated hearing of both proceedings (Board Exhibit No. 2, not printed but on file with the clerk).

In the decision of the Board, dated April 18, 1939, the Board makes its finding of fact (R. 1107-1178) under headings entitled, "Section I," "Section II," and "Section III."

Under "Section III," entitled, "The Unfair Labor Practices" (R. 1171), there are set forth under subsection "C" thereof (R. 1176), entitled, "C. The Refusal to Bargain Collectively," certifications of facts in the investigation conducted pursuant to subsection 9 (c), as to the appropriate unit for purposes of collective bargaining, and the facts as to the *designation* of the Amalgamated by a majority of the employees in the appropriate unit (R. 1176-1178).

The Board found (R. 1178) that there was no clear showing that the Amalgamated had been designated the collective bargaining agency by a majority of the employees within an appropriate unit at the time it sought to bargain with the respondent on May 5, 1937 (R. 1178), and because of such finding the Board found as a fact that the respondent did not refuse to bargain collectively in violation of Section 8 (5) of the Act. In its conclusions of law (R. 1179-1180) the Board held that the respondent had violated Section 8 (1) of the Act, and Sections 8 (2) of the Act, but failed to hold that it violated Section 8 (5) of the Act. In Paragraph 3 of its order (R. 1181) the Board, on the basis of the facts found in the consolidated hearing of the two cases, ordered the complaint to be dismissed "(2) insofar as it alleges that the respondent has engaged in an unfair labor practice within the meaning of Section 5 of the Act."

From the above and foregoing summary in regard to the interrelationship between the representation matter and the unfair labor practice matter, we respectfully submit that the Circuit Court of Appeals had jurisdiction under Section 9 (d) and 10 (e), to modify the order of the Board so as to provide for the Independent on the ballot, because questions of fact certified in the representation case were used as a *basis* for the Board's order. Had the Board failed to certify the appropriate unit and failed to certify the non-designation of the Amalgamated, it could not have dis-

missed the charge contained in the complaint that the respondent had refused to bargain collectively, with the Amalgamated. In the representation proceeding it was necessary for the Board to determine whether the Amalgamated had been designated by a majority of the employees in an appropriate unit; having first found that the production workers were an appropriate unit, it then proceeded to find that the Amalgamated was not designated by the majority of the employees of that unit, and, therefore, dismissed the charge of violation of Section 8 (5) of the Act in its order. Thus the order of the Board comes directly within the teeth of Section 9 (d). There was an investigation pursuant to subsection (c) of Section 9, and the facts certified following the investigation formed a basis for the order of the Board made pursuant to Section 10 (c), at least *in part*, and, therefore, when the Board petitioned the Circuit Court of Appeals for the enforcement of its order made pursuant to Section 10 (c), it included the facts certified with the record of the investigation in the transcript required to be filed under subsection 10 (e). When that was done, the Circuit Court of Appeals had jurisdiction to issue a decree enforcing, modifying or setting aside, in whole or in part, the order of the Board "upon the pleadings, testimony, and proceedings set forth in such transcript." Assuming, therefore, that the decree of the Circuit Court of Appeals modified the direction of election by its provision that the independent be on the ballot, if, and, when an election is held, support of the intent of Congress that, in the enforcement proceeding before the court, the court had jurisdiction to pass on questions of law and fact in the representation proceeding, is to be found in the report of the House of Representatives, Report No. 1147, 47th Congress, 1st Session, and on page 23 thereof, where it is stated:

> "Section 9 (d) of the bill makes it clear there is to be no court review prior to the holding of the elec-

tion, *and* provides an exclusive, complete and adequate remedy whenever an order of the Board made pursuant to Section 10 (c) is based in whole or *in part on facts certificated*, following an election, *or other investigation* pursuant to Section 9 (c). The hearing required to be held in any such investigation provides for an appropriate safeguard and opportunity to be heard. Since the certification and the record of the investigation are required to be included in the transcript of the entire record filed pursuant to Section 10 (e) or (f), the Board's actions and determinations of fact and law in regard thereto will be subject to the same court review as is provided for its other determinations under Section 10 (b) and 10 (c)."

And on page 24 of the report it is stated:

"The form and nature of the Board's order will, of course, be subject to court review, along with the other determinations and actions of the Board in the case, both as to the facts and law in the manner provided in subsection (e) or (f)."

The order of the Board, made pursuant to Section 10 (c), that is to say, made in connection with the "Complaint Proceedings" herein, is based in part upon facts certificated following an investigation pursuant to subsection (c) of Section 9. *That order is not based upon facts certified in connection with an election.* The facts certified were, in substance, that the production workers were an appropriate unit; that the Amalgamated did not have a majority of such production workers as members; and that a majority of such production workers did not designate the Amalgamated as their collective bargaining agency. Then followed the determination that the respondent had not violated Section 8 (5) of the Act by refusing to bargain collectively with the Amalgamated, and, that part of the order of the Board that the charge that Section 8, Subsection 5, was violated, be dismissed.

The lower court having before it the certification of facts resulting from the investigation, since those certificates were included in the transcript, required to be filed under subsection (e) of Section 10, and subsection (d) of Section 9, the lower court had jurisdiction by the express terms of the Act, to make an enter "upon the pleadings, testimony, and proceedings, set forth in such transcript," a decree enforcing, modifying, or setting aside in whole or in part "the order of the Board."

In its order, which the Board sought to be enforced by the lower court, the Board, in paragraph 1, and subsections (a) and (b) thereof, ordered the respondent to cease and desist from certain practices. In paragraph 2, and subsections (a), (b) and (c) thereof, the Board ordered the respondent to take certain affirmative action. In paragraph 3 (R. 1181) the Board ordered the dismissal of the unfair labor practice charged against the respondent within the meaning of Section 8 (5) of the Act in the following language:

> "The Complaint is hereby dismissed * * * (2) insofar as it alleges that the respondent has engaged in an unfair labor practice within the meaning of Section 8 (5) of the Act."

It conclusively appears, that, in order to dismiss complaint as to the unfair labor practice charged against the respondent, within the meaning of Section 8 (5) of the Act, that part of the Board's order, dismissing the charge, was *based* upon *facts certified* following an investigation, pursuant to subsection (c) of Section 9. Those facts were certified by the Board on page 1178 of the record, when it stated:

> "There was no clear showing that the Amalgamated represented a majority of the employees within the appropriate unit at the time it sought to bargain with the respondent."

Without such certification or finding of fact, the Board could not have dismissed the charge contained in the complaint that the respondent did not violate Section 8 (5) of the Act.

The petitioner's brief, on page 23 thereof, states that:

> "In the instant case there were no 'facts certified' in the representation proceeding; there was only a direction of election to determine whether or not there should be a certification of representatives. Consequently Section 9 (d) did not grant jurisdiction to the court below as contended."

That statement is clearly erroneous, because the position of the Amalgamated, as shown in its petition, was, that it had been designated by a majority of the production workers, and that the production workers were the appropriate unit for the purpose of collective bargaining. The Board did certify, and by that we mean, find as a fact, that the production workers were an appropriate unit, and, further, that the Amalgamated had not been designated by a majority of that unit for purposes of collective bargaining. Then the board based its order for the dismissal of the unfair labor charge in the complaint as to Section 8 (5), on those two facts, *certified* after its investigation held under Section 9 (c). These facts the Board was required to certify, in order to arrive at the ultimate fact that the respondent had not failed in its duty to bargain c lectively with the Amalgamated as required by subsection 5 of Section 8 of the Act. Section 9 (c) of the Act provides:

> "Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy, and certify to the parties in writing the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing, upon due notice, either in conjunction with a proceeding under Section 10, or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives."

In the conduct of its hearing, for the purpose of investigating the controversy about representation, the Board did not utilize at that time "a secret ballot," but it sought to utilize another "suitable method," namely, an examination of the records of both the Amalgamated and the Independent. After having attempted to investigate by means of the records of the Amalgamated, which were refused (R. 1178), it found that the testimony of the financial secretary of the Amalgamated was insufficient proof of the fact that the Amalgamated represented a majority of the production workers, that is, in the appropriate unit (R. 1178).

Since the investigation pursuant to subsection (c) of Section 9, and the investigation of the unfair labor practice were consolidated, and the facts in both investigations were the basis of the order of the Board, then pursuant to the power lodged in the Circuit Court by subsection (e) of Section 10, namely, that the court had jurisdiction of the *proceeding*, and the *question determined therein*, the lower court had jurisdiction of any collateral matter which would interfere with the proper determination of the *question determined therein*. One *question determined* by the Board in the unfair labor practice proceeding was the matter of disestablishing the Independent for purposes of collective bargaining; and, because in addition to the transcript which covered the unfair labor practice proceeding only, the court could take into consideration, pursuant to the provisions of Section 9 (d), the facts determined in the representation proceeding, for the purpose of exercising its jurisdiction over the "question determined therein," it logically follows that the court could make such modification of the order itself, which would eventually determine not only the ultimate duties of the employer, the respondent here, but also the ultimate rights of employees with respect to their choice of a collective bargaining agency. The question before the

Board, and the question before the court, was correctly characterized by the lower court as a labor dispute. That labor dispute involved the matter of interference on the part of the employer with the selection of the bargaining agent of the employees. The ultimate final end result of any proceeding under the Act is to carry out the purposes Congress had in view in enacting the Act. That purpose is set forth in the last paragraph of Section 1 of the Act as follows:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce, and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining, and by *protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing* for the purpose of negotiating the terms and conditions of their employment or for their mutual aid and protection" (italics supplied).

When the lower court looked at the order of the Board and found that facts certified in the representation proceedings led in part to the order of the Board in the unfair labor practice proceedings, it saw that it had the jurisdiction to settle, once and for all, the ultimate question of when the dispute between the parties could best be finally settled without prejudice to the freedom of choice guaranteed by the Act. Having the jurisdiction, it then proceeded to exercise it under the exclusive jurisdiction granted under Section 10 (e) and proceeded to eliminate from the Board's order the limitations placed upon the employees with regard to their right, ultimately to freely choose the Independent. It restored to the members of the Independent the right to select it, at a time, and, under circumstances when, and, if, an election is held, that the respondent will be under an injunction not to interfere with or coerce their freedom of choice.

II.

The Court Did Not Modify the Withdrawal of Recognition and Disestablishment Provisions of the Board's Order.

It has heretofore been assumed by this Court that orders requiring withdrawal of recognition and disestablishment did not divest the employees of the right thereafter to choose the disestablished union as their bargaining agent in a free election held for that purpose.[1]

The Board's position in the instant case is that disestablishment and withdrawal of recognition from a union is not enough. It is here contending that a disestablished union is, or should be, under a perpetual and permanent disability and no longer eligible to represent the employees.[2]

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[1] In **Texas & N. O. R. Co. vs. Brotherhood of Ry. & S. S. Clerks,** 281 U. S. 548, this court approved an order which provided for disestablishment "until such time as these employees by a secret ballot taken in accordance with the further direction of the court, and without the dictation or interference of the Railroad Company and its officers, should choose other representatives" (p. 557).

In **N. L. R. B. vs. Fansteel Metallurgical Corp.,** 306 U. S. 240, this court, after approving of the disestablishment of Rare Metal Workers of America, Lodge No. 1, stated: **"Whether Rare Metal Workers of America, Lodge No. 1,** or any other organization, is the choice of the majority of the employees in the proper unit can be determined by proceedings open to the Board" (83 L. Ed. at p. 478) (bold supplied).

[2] In its decision, the Board, after stating that it would hold an election to determine the appropriate bargaining units for representation of the employees "after we are satisfied that the effects of respondent's unfair labor practices have been dissipated," stated: "In such election we shall make no provision for the designation of the Independent on the ballot" (R. 1179).

(This footnote continued on next page.)

The Board states that the lower court has refused to grant "full enforcement to the provisions of the Board's order * * * requiring respondent to withdraw all recognition from and completely to disestablish the company dominated Independent as a bargaining representative of the employees" (p. 29 Board's Brief). We respectfully submit that the lower court has in fact granted "full enforcement" of the said provisions *to the full extent authorized under the National Labor Relations Act.*

The lower court not only ordered the respondent to withdraw all recognition of the Independent, but also ordered the respondent to give full publicity thereto by posting notices stating that it had withdrawn all recognition of the Independent and had disestablished it as a representative of its employees (R. 1213).

When the lower court undertook the task of framing an appropriate order, it was cognizant of the fact that the Board would construe it as in effect ordering the "execution" or "blood purge" of the Independent unless such construction was negatived by appropriate language in its order.[3]

To avoid any misconstruction of the rights of the employees and respondent following the disestablishment of the Independent, in view of the publicity given to the Board's decision, the lower court merely added to its order appropriate language which would negative any assump-

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In its direction of the election the Board provided that the employees should be given the opportunity to vote only for the C. I. O. union, or the C. I. O. union or the A. F. of L. union so far as the power house was concerned (R. 1181-1182).

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[3] The court had before it the Board's decision in which the Board definitely stated that the Independent would not be permitted a place on the ballot (R. 1179).

tion that the court's order would in any way interfere with the rights vested in the employees under Section 7 of the National Labor Relations Act.

Accordingly, the lower court, in its cease and desist order, added, by way of explanation:

> "provided, however, that the said employees shall remain free to choose at the coming election or any future election held or conducted pursuant to the provisions of the National Labor Relations Act, the Independent Union to represent them in labor relations dealings with the respondent; and provided, further, however, that the said employees be not influenced or coerced in said election by the respondent and that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union" (R. 1213).

Accordingly, the lower court also, in connection with that part of its order dealing with the posting of notices by the respondent, required the notice to include a statement that,

> "it (the respondent) would not recognize it (the Independent) until and unless its said employees freely and of their own choice select the Independent as their representative to so deal with said respondent concerning said labor disputes" (R. 1213).

Because the lower court added the language hereinabove quoted, the Board claims that a lower court did not give effect to the "withdrawal of recognition" and "disestablishment" provisions of its order. This claim is not well founded.

The language objected to by the Board was merely explanatory of the employees' rights under the Act,—*rights which neither the Board, the courts, nor the respondent could destroy or take away.* It established no new rights. It merely safeguarded and protected inherent substantive rights guaranteed the employees under Section 7 of the Act.

In short, all that the lower court did, by inserting the language to which the Board objects, was to advise all interested parties that it was protecting and not withdrawing or taking away any rights which were guaranteed the employees under the Act.[4]

Inasmuch as the lower court, in the instant case, *did* order "disestablishment," and *did* order "withdrawal of recognition," this case is unlike *National Labor Relations Board vs. Newport News Dry Dock & Ship Building Corp.*, No. 20, this Term, which has been argued before this Court and is now pending decision.

In the *Newport News* case, the lower court refused to order either the withdrawal of recognition from or the disestablishment of the union which it had found had been dominated and interfered with by the employer.

In the case at bar the Board is not content with an order requiring disestablishment and withdrawal of recognition. It is here asserting that it is not enough to have the union disestablished and all recognition withdrawn from it so that it will be on the same basis as the other unions. It is here asserting that the disestablished union has become *permanently* disqualified from ever acting as the representative of the employees, for all times and under all conditions, *whether the employees desire to be represented by it or not.*

The Board is, in effect, arrogating to itself the role of an executioner. It claims the right to kill any organization which has been given what the Board deems a "kiss of death" by an employer. It claims that right without regard to the wishes or desires of the employees. It proposes to

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[4] The language added by the lower court, in effect, merely advised the interested parties that the court, although it required the respondent to disestablish and withdraw recognition of the Independent, still recognized the statutory right of the employees to full freedom of choice in the selection or designation of their bargaining agent.

exercise it, even though the infirmity could easily be removed. It would *destroy* rather than *cure*. The "family" (the employees) is not consulted or given any voice in the making of the final decision. Everyone is helpless and at the complete mercy of the all-powerful and omniscient executioner—the National Labor Relations Board.

III.

The Court Did Not Err in Incorporating in Its Order the Language Complained of by the Board.

It may be conceded, *arguendo*, that a prolific cause of dispute between employers and employees was the attempted imposition of employer-controlled labor organizations, or so-called "company unions." The Board devotes a considerable portion of its brief in an attempt to establish and emphasize this point.[5]

Employer domination or control of a union, wherever found, should be eradicated and removed. This should be true whether the union is affiliated or unaffiliated. The National Labor Relations Act was designed to protect the employees from such domination or control whenever or wherever exercised.

Not only was the Act designed to protect the employees from employer domination or control, but the Act especially provides that:

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[5] The Board has repeatedly used the term "company union" in its brief. We assume that said term was used by the Board in the commonly understood sense i. e. a labor organization **dominated and controlled** by an employer. We assume further, that the Board did not intend to apply this term to a labor organization merely because it was limited to the employees of a single employer and unaffiliated with a national labor organization.

"Employees shall have the right to *self-organization,* to *form,* join, or assist labor organizations, to bargain collectively through representatives *of their own choosing,* and to engage in concerted activities, for the purpose of collective bargaining and other mutual aid or protection" (italics supplied).[6]

By Section 7 of the National Labor Relations Act, Congress expressly provided that employees shall not only have the right to join or assist labor organizations, but to *form* and *organize* them as well. Thus the employees were given the right, in the exercise of *their* discretion, to form or join a local unaffiliated union, or join a union affiliated with a national labor organization.

May we respectfully emphasize the fact that the rights vested in employees by Section 7 of the Act are absolute and unconditional; that said rights cannot be taken away from the employees by any act of an *employer* and cannot be taken away by any act of the *Board.*

It is to be noted, that while Section 7 declares the rights of employees, Section 8 of the Act merely enumerates Acts which constitute unfair labor practices on the part of the employer. Section 7 is wholly independent of Section 8. In enforcing Section 8, the Board is given no power to impinge upon, or interfere with, any rights vested in the employees under Section 7 of the Act.

It is pointed out by the Board that the "model" for proper preventive and remedial action was supplied by this Court in *Texas & New Orleans Railway Company vs. Brotherhood of Railway Clerks,* 281 U. S. 548. The Board then goes on to say that the affirmative remedy judicially approved in that case "has received well night universal acceptance" and "was known to and approved by Congress in enacting the National Labor Relations Act."

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[6] Section 7 of the National Labor Relations Act.

We submit that the *lower court,* and not the Board, *has followed that model.*

By that part of the decision of this court in the *Texas & New Orleans* case, which the Board quotes at page 33 of its brief, the inference might be drawn that the court required the Railroad to permanently disestablish the Association. Had the Board completed the quotation, it would have been noted that such was not the case.

In the *Texas & New Orleans* case, this court in commenting on the order of the lower court, which it approved, said:

> "The court directed that, in order to purge themselves of this contempt, the Railroad Company and these officers should completely 'disestablish the Association of Clerical Employees,' *as it was then constituted* as the recognized representative of the clerical employees of the Railroad Company, and should reinstate the Brotherhood as such representative, *until such time as these employees by a secret ballot taken in accordance with the further direction of the court, and without the dictation or interference of the Railroad Company and its officers, should choose other representatives*" (italics supplied) (281 U. S. at 557).

We respectfully submit that the *Texas & New Orleans* case certainly does not support the contention that, because an organization has once been supported or controlled by an employer it cannot thereafter be recognized by an employer despite the fact that all taint has been removed and the employees have chosen it as their representative free from dictation or interference of the employer. On the contrary, the *Texas & New Orleans* case recognized the right of the employees to designate any organization they saw fit provided this was done by secret ballot without dictation and interference of the employer.

In support of its contention that it has the power to deprive employees of the right to vote for a "disestablished" union, the Board also relies on *National Labor Relations Board vs. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Labor Relations Board vs. Pacific Greyhound Lines, Inc.*, 303 U. S. 272; and *National Labor Relations Board vs. Fansteel Metallurgical Corp.*, 306 U. S. 240. None of these cases support this contention.

In the *Pennsylvania Greyhound* case, the employer promoted the organization; urged employees to join; prepared the by-laws; presided over the organization's meetings; selected employee representatives of the organization; had control over any change in the by-laws; and, paid all expenses. Employees paid no dues. No wonder that this court held:

> "There was ample basis for its (the Board's) conclusion that withdrawal of recognition of the Association by respondents, accompanied by suitable publicity, was the appropriate way to give effect to the policy of the Act" (303 U. S. at p. 271).

This court, however, even under those facts, did not hold that the Association could not be selected by the employees free from company interference or coercion after it was purged of company domination, support, or control. On the contrary, it would appear that this court assumed that it could be selected, *after a free election*, for it stated:

> "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union *before an election* by employees under Section 9 (c), even though it had ordered the employer to cease unfair labor practices. But, here respondents, by unfair labor practices, have succeeded in establishing a company union *so organized that it is incapable of functioning as a bargaining representative of employees*" (Italics supplied) (303 U. S. at p. 270).

In the *Pacific Greyhound* case also, *unlike the instant case*, not only did the employer interfere with the employees in their right to choose their labor organization, but the employer also dominated and controlled the organization itself. Yet all that this court held in that case was that, under the facts there involved, "*continued* recognition" (italics supplied) might be "a *continuing* obstacle to the exercise of the employees' right of self-organization and to bargain collectively through representatives of their own choosing" (italics supplied) (303 U. S. at p. 275).

As we have heretofore pointed out, outside of the evidence to the effect that the respondent in this case had aided and assisted in the organization and formation of the Independent, there is no evidence that respondent had, in any manner or in any wise, controlled, dominated, or interfered with the organization or any of its functions or activities. There is no evidence in this case that respondent imposed its will on its employees or the Independent in respect to the structure of the Independent or the provisions of its articles or by-laws.

On the contrary, it definitely appears that the *structure* of the Independent was the result of the free, independent, and uninfluenced action of its members. The Board has never found, or claimed, that under the Independent's articles and by-laws it did not have the "form and structure adequately to function as a free representative of the employees."[7]

Unlike the situation in the two *Greyhound* cases, it definitely appears here that the Independent was not "so organized that it was incapable of functioning as a bargain-

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[7] See **Cudahy Packing Co. vs. N. L. R. B.** (C. C. A. 8th) 102 F. 2d 745 (pp. 752-753).

ing representative of employees."[8] If the lower court erred at all it erred in ordering the respondent to withdraw recognition from the Independent and to disestablish it prior to an election under Section 9 (c) of the Act. It certainly did not err in not disqualifying the Independent as a candidate of the employees.

In the two *Greyhound* cases, this Court did not either directly or indirectly hold that an order for withdrawal of recognition and disestablishment was tantamount to an execution and the complete elimination of a candidate. Indeed, as we have pointed out, the language of this Court in those cases clearly shows that this Court took it for granted that the disestablished union could still be a candidate at a free election conducted under Section 9 (c) of the Act.

The *Fansteel* case, likewise, instead of supporting the Board's contentions, refutes them and supports the lower court. In the *Fansteel* case, this court carefully pointed out:

> "While respondent presents a strong protest, insisting that Local No. 1 of the Rare Metal Workers was the free choice of the employees after work was resumed, we cannot say that there is not substantial evidence that the formation of this organization was brought about through promotion efforts of respondent contrary to the provision of Section 8 (2), and we think that the order of the Board in this respect

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[8] As this court stated in the **Pennsylvania Greyhound** case: "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employes under Section 9 (c), even though it had ordered the employer to cease unfair labor practices. But, here respondents, by unfair labor practices, have succeeded in establishing a company union **so organized that it is incapable of functioning as a bargaining representative of employees**" (bold supplied) (303 U. S. at p. 270).

(requiring withdrawal of recognition of Rare Meta' Workers) should be sustained. *Whether Rare Metal Workers of America, Lodge No. 1, or any other organization, is the choice of the majority of the employees in the proper unit can be determined by proceedings open to the Board"* (italics supplied) (306 U. S. at p. .....) (83 L. Ed. at p. 478).

Thus, this Court, in the *Fansteel* case, definitely held that even though the employer was required to withdraw recognition of Rare Metal Workers because of the unfair labor practices of the employer, *the Rare Metal Workers could be a candidate of the employees at an election held under Section 9 (c) of the Act.* The lower court, by its order, merely made a similar provision regarding the Independent. In that respect it literally adopted the determination of this Court in the *Fansteel* case.

A.

The Board Had No Power Permanently to Disqualify the Independent as the Employees' Candidate.

The Board contends that it has the power "to order the permanent disestablishment of an employer dominated union" (Board's Brief, pp. 38-46). It argues that such organization, whether or not it has been purged of any infirmity, should be permanently barred from competing "for membership of the employees and for status as their bargaining representative" (Board's Brief, p. 41).

The Board asserts that it is supported in its position by the decisions of this Court in the *Greyhound* cases,[9] and the *Fansteel* case[10] (Board's Brief pp. 38, 39).

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[9] **N. L. R. B. vs. Pennsylvania Greyhound Lines, Inc., 303 U. S. 261; N. L. R. B. vs. Pacific Greyhound Lines, Inc., 303 U. S. 272.**

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[10] **National Labor Relations Board vs. Fansteel Metallurgical Corp., 306 U. S. 240.**

We have heretofore commented on said cases. As we have already pointed out, those cases went no further than to hold that employer recognition of a "company dominated" union should be *suspended* pending the holding of a free election under Section 9 (c) of the Act, so that the employees would be enabled to exercise their full freedom of choice at the election.

As we have also heretofore pointed out, it was assumed in the *Greyhound* cases, and *definitely stated* in the *Fansteel* case that the employees could designate the "disestablished" union at such election, if they so desired.

The case of *Consolidated Edison Co. vs. N. L. R. B.*, 305 U. S. 197, cited by the Board (Board's Brief p. 39) involved the consideration of the power of the Board to invalidate a contract between an employer and a labor union. It, in not even the remotest degree, dealt with none of the questions here involved.

The Board attempts to support its contention, that it has the power to "permanently" disestablish, on three grounds, viz:

1. The attitude of the employees toward a union which has been employer dominated will probably never be wholly free from employer influence.
2. Continued domination of a union by an employer who formerly dominated it would be easy, yet difficult of detection.
3. Any possible restriction on employee choice resulting from permanent disestablishment is slight compared with the advantages of the remedy.

We will now take up and analyze these three points *seriatim*.

I. The employees would probably be influenced against the Independent, because of the employer's previous activities, rather than in favor of it. In any event what their attitude might be in a free election is no concern of the Board.

The Board states that the "court below * * * imposed conditions upon the disestablishment remedy which destroy its efficacy" (Board's Brief, p. 39). As we have pointed out, the lower court required the respondent to completely disestablish the Independent. In that respect the lower court imposed no conditions. Under the lower court's disestablishment order the respondent was forever precluded from recognizing the Independent unless the *employees*, by their own independent action through the instrumentality of a free election, demanded such recognition.

The lower court thereby followed the *Greyhound* and *Fansteel* cases and did not, as claimed by the Board, adopt the "premise which was advanced against the disestablishment provisions of the Board's orders in the *Greyhound* and *Fansteel* cases" (Board's Brief p. 40).

At page 40 of its brief, the Board attempts to convey the impression that the Independent was "dominated and supported" by the employer "throughout its history." We cannot leave that statement unchallenged. It has no support in the record. Excepting insofar as the respondent may have aided the Independent in its inception and promotion, as found, there is no evidence that respondent in any way dominated or supported the Independent. Likewise, there is no evidence that the respondent had anything whatsoever to do with the structure of the Independent or its administration or actual functioning.

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Not only did the respondent in no manner or in any wise interfere with the functioning or administration of the Independent, but upon request of the Board's Regional Director, N. S. Clark, by letter dated June 8, 1937, it had no further dealings with the Independent since that date (R. 1043-1046, 1071) (R. 89).

The Board contends that the consequence of a violation of Section 8 (2) of the Act is that the affected organization "inevitably stands in the minds of the employees as the candidate of the employer" and that this "precludes it from a place on the ballot * * * and requires its permanent disestablishment" (Board's Brief p. 40).

We respectfully submit that the mere fact that employees may be cognizant of the fact that an employer favors a certain organization should not deprive the employees, *if they so desire,* to select that organization. That fact should not deprive the employees of the right to choose any organization they please. Under Section 7 of the Act the employees are given full freedom of choice, *and this includes the right to choose unwisely.* This moreover, includes the right to choose an organization *favored* by the employer, as well as one *opposed* by him.

Certainly Congress never intended to circumscribe or limit the right of employees to use *their own judgment* in selecting *their* bargaining agent. The Board seems to think that employees are imbeciles under legal disability who have become its wards; and that, as their "guardian," the Board must substitute *its* judgment and control their discretion.

If the Board is to substitute *its* judgment for that of the employees and deprive the employees of the right to choose whomsoever they see fit, Section 7 has become a mere mockery. *Interference by the Board* has then been substituted for *interference by the employer.* Freedom of choice by the employees has become a sham and an empty phrase.

We believe that this Court will be as shocked as we were upon reading the Board's statement that "The Board should not be required to permit company sponsored labor organizations, which were a prime object against which the Act was directed, to resume operations upon the Board's guess that they will not prove harmful" (Board's Brief p. 43). This statement is proof positive that the Board does consider employees as mere *wards* and that it has been appointed their custodian and guardian. This statement, moreover, naively assumes that labor organizations can function only by its *favor,* instead of by *right.* What a travesty "freedom of choice" would be, if the Board's contentions were to be given the stamp of approval.

The Board states that if the Independent "is permitted to continue to compete for membership of the employees and for their status as their bargaining representative, it may be *expected* to retain the same structure, policies, and officials, the choice of which * * * have been decisively influenced by the employer and shaped with an eye to his approval" (italics supplied) (Board's Brief pp. 41-42). This statement is not predicated upon the record. It assumes a fact not established, viz, that the structure, policies and officials were chosen by virtue of the respondent's influence.

Nevertheless, we respectfully submit that the employees certainly should be given the right to choose *their own* structure, policies, and officials. If any of these are bad, it certainly must be assumed that the same will be considered and weighed *by the employees* at the election *before they cast their ballots.* The employees have the power to change the structure, policies, and officials of the organization. As long as that power is not interfered with by the employer, if the employees do not see fit to make any changes and are satisfied with the structure, policies, and officers of the organization, what concern is it of the Board?

It must be remembered that the employees were, by the order of the court, under the continuing protection of a permanent injunction which required the respondent to cease and desist from in any way interfering with or dominating the Independent and contributing any support to it.[11] This fact is given no consideration by the Board.

If the Board's argument is sound it must follow that, if an employer is assumed to favor an unaffiliated union against an affiliated organization, the employees may *never* thereafter vote for an unaffiliated union. Similarly, if an employer, is assumed to favor a C. I. O. union over an A. F. of L. union, the employees may *never* thereafter vote for a C. I. O. union, or *vice versa*. If the Board's arguments are sound the employer can give any organization, which is a candidate for representation rights, the "kiss of death." *An employer secretly favoring one candidate could eliminate the other by making it known that it favors the organization which it secretly opposes.* Such is the result of the Board's "logic."

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[11] The "cease and desist" provisions of the lower court's order are as follows:

"IT IS HEREBY ORDERED that the Falk Corporation, respondent herein, cease and desist from (a) dominating or interfering with the formation or administration of the Independent Union of Falk Employees or of any other labor organization of its employees and from contributing financial or other support to said Independent Union or any other labor organization; (b) from interfering with, intimidating, restraining, coercing, or endeavoring to coerce, its employees in their right to form, join or assist any labor organization or in exercising their right to freely and collectively bargain through representatives of their own choosing, or to freely engage in concerted activities for the purpose of collective bargaining (R. p. 1213).

If the employer has given the "kiss of death" to the Independent, the Board argues that the employees nevertheless are free to form a new unaffiliated union if they desire to be represented by an unaffiliated organization (Board's Brief p. 45). By this statement the Board has disregarded its own argument. If a new unaffiliated organization were a candidate, *the employees would be no less cognizant of the fact that it was favored by the respondent over an affiliated union.* They would, more likely than not, adopt the same structure, policies, and officers for this new organization. Would they be deprived of that right?

The Board states that "denial to the Board of power to order permanent disestablishment would impose upon it the virtually impossible task of determining when the interference had ceased to have any effect" (Board's Brief p. 42). This statement is rather strange in view of the fact that the Board stated in its own decision: "We shall direct that such election be held upon our further order *after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order*" (R. 1179) (italics supplied).

Respondent in effect disestablished the Independent as early as June, 1937 in deference to the request of the regional director, N. S. Clark (R. 89, 1043-1046, 1071). It will be conceded by the Board that the respondent, in compliance with the lower court's order, posted the required notices and has done everything required of it under the order.[12]

As we have heretofore pointed out, the Board has no authority to substitute its judgment for that of the employees. The power to enforce Section 8 of the Act cannot be exercised to take away the rights vested in the employees under Section 7 of the Act. It must always be assumed, which is the only assumption which can be made,

[12] The notices were posted beginning August 14, 1939.

that the election under Section 9 (c) will be a fair and *free* election and that the respondent will comply with the terms of the injunctional order.

2. The Board cannot assume that respondent will violate the injunctional order. In any event the Board cannot eliminate the Independent as the employees' candidate on the ground that violation of the injunctional order would be easy, and difficult to detect.

At pages 43-44 of its brief, the Board asserts that violation of the cease and desist order is "markedly facilitated" if the old organization is permitted to continue.

The Board states in this connection that an employer could more easily effect and conceal control of the old organization, "which was designed and officered in accordance with their wishes," than he could a new organization which might be created by the employees.

There is no evidence in the record that the Independent "was designed and officered in accordance with" the respondent's wishes. On the contrary, the evidence shows that the Independent was designed and officered in accordance with the wishes of the employees themselves.

As we have heretofore pointed out, there is no support in the record for an assumption that if a *new* organization were formed it would not take the same form as the old organization, and would not be officered by the same individuals. The change, if any, would be one of form rather than substance.

In arguing that the old organization should not be permitted to continue because the cease and desist order might be violated and such violation might be difficult of detection, the Board is again assuming the role of guardian to the employees. As such guardian, it is asserting the authority to deprive the employees of their right of freedom of choice. It justifies the exercise of that authority, not on the ground

that the employees will not have full freedom of choice at an election conducted under Section 9 (c), but on the ground that the beneficiaries of said choice *may subsequently be interfered with by the employer.*

If the Board is given the authority to strike down any organization which is the free choice of the employees merely because that organization *might,* at some later date, be interfered with by an employer, in violation of Section 8 (2) of the Act, Section 7 of the Act is merely empty verbiage. Section 7 should have been rephrased to provide that employees shall have the right to form or join only such a labor organization which shall have been approved by the Board.

The Board's argument is in substance the same as the argument that because a horse might be stolen, the horse should be shot. The Board argues that just because the Independent *might* be interfered with if it is chosen at the election, it should be *destroyed.*

Although we have pondered hard and long on the Board's contention that control of a new organization could not be concealed as readily as control of the old organization, we are just unable to comprehend the same. We can see no merit in this contention whatsoever. In any event, this affords the Board no right to deprive the employees of any of the rights guaranteed them under Section 7 of the Act.

3. Answer to Board's contention that "any possible restriction on employees' choice resulting from permanent disestablishment is slight compared with the advantages of the remedy."

The Board, at page 44 of its brief, admits that "employees who may desire to be represented by the Independent and who may have remained uninfluenced by the unfair labor practices, or who may assert that they have cast

off such influence during the period of nonrecognition, are denied the Independent." It goes on to say that the "possible restriction on an absolutely free choice by" the employees is not a serious one, and that those employees who desired an unaffiliated organization "are free to form a new union." What authority the Board has to impose any restrictions whatsoever, whether the restrictions are serious or not, it does not say. We respectfully submit that the National Labor Relations Act does not give the Board the power to restrict the employees in the full freedom of choice guaranteed them by Section 7, in any manner or in any degree whatsoever.

While the Board says that "those employees who desire an unaffiliated organization are free to form a new union," it will be noted that *the Board excluded any such possible candidate from the ballot.*[13]

The Board again makes much of the point that if the employees should be permitted to vote for the Independent, some of the employees will be influenced by the knowldge that the Independent "is the employer's candidate." We have heretofore dealt with this contention (*supra*, pp. 49-54).

The Board infers that by reason of such knowledge, the employees will be encouraged to vote for the Independent. Certainly, employees have the right to cast their ballot in favor of a candidate whom they believe is favored by the employer so long as the ballots are cast by the employees of their own free will without any intimidation, coercion, or interference by the employer. Moreover, if the employees

[13] In the direction of the election, the Board ordered that the employees should have the right to vote only for the C. I. O. as the plant representative (exclusive of the power house employees), or for the C. I. O. or A. F. of L. to represent the power house employees, or neither. **The Board made no provision enabling the employees to advance and vote for any other candidate** (R. 1181-1182) (bold supplied).

know that a certain candidate is favored by an employer, it is certainly better for the employees to be apprised of that fact. It is just as logical to assume that the knowledge, that a candidate is favored by an employer, would influence the employees to vote against such candidate than it is to assume that the employees would be encouraged to vote *for* the candidate.

The freedom of choice of the employees will be given full play. *Their* selection will be based upon *their* judgment of the situation. In the exercise of that judgment they will be protected by the injunctional order against the respondent. Thus, all the employees will be given an absolute freedom of choice without restriction or limitation by either the Board or the respondent. This procedure is the only procedure which will assure the employees the rights guaranteed them by Section 7 of the Act.

B.

The Provisions of the Order of the Lower Court Objected to by the Board are in Keeping with the Requirements of the National Labor Relations Act.

At pages 46-50 of its brief, the Board argues that "even if the Board cannot order permanent disestablishment, the conditions imposed by the court are unreasonable." In support thereof, the Board makes two contentions, viz:

1. That "the court could not properly assume that, by the time of the election, the Independent could appear on the ballot without unfairly influencing the employees' choice."
2. That "the conditional disestablishment ordered by the court cannot serve to recreate freedom of choice by respondent's employees."

We shall now consider these contentions *seriatim:*

1. The lower court properly assumed that the Independent could appear on the ballot.

We have heretofore shown that under the *Texas & New Orleans Greyhound,* and *Fansteel* cases, the lower court properly assumed that the Independent could appear on the ballot (*supra,* pp. 42-48).

What we have already stated refutes the Board's contention that the lower court could not properly assume that the Independent could appear on the ballot "without unfairly influencing the employees' choice."

We have also heretofore shown that there was no basis for the contention by the Board that employer interference left effects which would unfairly influence an election (*supra,* pp. 49-54). It is our position that there is no basis for any assumption that because of employer interferenece there could be no free election within the contemplation of the Act.

In the instant case, as we have heretofore shown, the respondent in effect disestablished the Independent as early as June 1937; has posted the notices required by the lower court in its injunctional order; and, has complied therewith since the date of its issuance. Surely, ample time has passed to enable the employees of the respondent to take such steps as they saw fit to avail themselves of, the rights vested in them under Section 7 of the Act.

The Board states "If we are wrong in thinking that a fair election * * * could never be held among respondent's employees, it is, at least, clear that a considerable period of time would have to pass before such an election would be possible" (Board's Brief, page 48). May we state in reply that more than two years have elapsed during which the Independent has not been recognized by the respondent, *by its own voluntary action.* The situation here presented certainly shows nothing which would prevent the Board from

conducting a fair and free election *without any further delay.*

The Board also states, "It certainly was not an abuse of discretion for the Board to determine that the employees should not indefinitely be denied all opportunity to select a representative—with the consequent postponement of the collective bargaining which the Act fosters—until a determination can be made, if it ever can, that respondent's sponsorship of the Independent will not influence an election in which that organization participates." May we state in reply that, *but for the order of the lower court,* **the Board itself would have indefinitely denied to the employees the opportunity to select a representative which would have postponed collective bargaining.**

By the order of the lower court, it was intended to assure the employees the right to vote for any candidate seeking their favor, so that at the coming election the employees would be given their full freedom of choice and would be in a position to select their bargaining agent.

On the other hand, the Board in its "direction of election," instead of affording the employees full freedom of choice, as between any candidate advanced by them, *did not in effect provide for any election at all.* Under its "direction of election," the Board provided that the employees should be given the opportunity to vote either for the C. I. O. or against it. (In the case of the power house employees, for the C. I. O. or the A. F. of L., or for neither.) (R. 1181-1182).

Let us assume that an election were conducted by the Board pursuant to its "direction of election." Let us further assume that at this election, because the employees are given no choice of candidates, the employees refused to designate the C. I. O. as their bargaining agent, and it does not receive a majority of the votes. This result, we submit, is not only

possible but highly probable. Would the Board then contend that its "election" has given the employees a speedy "opportunity to select a representative," and would the Board then contend that the "election" has prevented a "postponement of collective bargaining?"

We respectfully submit that an "election" held in the manner and form provided for in the Board's "direction of election" would indefinitely postpone "the collective bargaining which the Act fosters," and that by virtue of such "election" the employees would "indefinitely be denied all opportunity to select a representative."

To avoid such postponement of their right of collective bargaining, it might well be argued that *the Board is in effect coercing the employees to select the C. I. O. as their bargaining representative, or to indefinitely remain without any bargaining agent.*

2. The disestablishment ordered by the court was not a "conditional disestablishment." It put the Independent on the same plane as any other candidate.

At pages 48-50 of its brief, the Board argues that "the conditional disestablishment ordered by the court cannot serve to recreate freedom of choice by respondent's employees." As we pointed out earlier in this brief *(supra,* pp. 37-41), the disestablishment order of the court was absolute and unconditional,—as absolute and unconditional as the disestablishment orders in the *Greyhound* and *Fansteel* cases.

The only purpose of a disestablishment order is to remove from the disestablished organization any benefits which it would otherwise enjoy by reason of employer recognition, and put it on the same plane and on the same basis as any other candidate seeking the favor of the employees.

This result was accomplished by the order of the lower court requiring the respondent to withdraw recognition of the Independent and disestablish further dealings with it.

The disestablishment order of the lower court did not provide for a "fragmentary disestablishment," as contended by the Board, and was in no sense "self contradictory." The "cease and desist" provisions in the injunctional order assured the employees that they would be protected from any domination, interference, or coercion by the respondent in the exercise of their freedom of choice, and the disestablishment order effectually removed any advantages, as far as recognition was concerned, which were not enjoyed by other candidates seeking the favor of the employees.

The Board goes on to say that "An effort to overcome the effects of employer domination of a labor organization can succeed only if it is brought home to the employees that, because of the employer's sponsorship, the organization is not a fit medium for collective bargaining. * * * The order of the court cannot transmit that message" (Board's Brief p. 49). Surely the "cease and desist" provisions of the order of the lower court, its disestablishment order, and its order requiring the posting of notices stating, among other things, that "the respondent will and does withdraw recognition," goes as far as necessary to adequately inform the employees of the true situation. Surely judicial and administrative process should not be used for the purpose of disseminating campaign material in favor of one candidate or against another.

As we have heretofore pointed out, it should be left to the employees themselves to determine whether or not the Independent was, or had become, "a fit medium for collective bargaining." They should be given the opportunity to express their opinion in a free election conducted under Sec-

tion 9 (c) of the Act. As we have heretofore pointed out, employees will be given the opportunity at such election to refuse to select the Independent because they conclude that the activities of the employer have demonstrated that it is not "a fit medium for collective bargaining."

It is just as logical to assume that, in the exercise of their freedom of choice at such free election, the employees will be influenced *against the Independent* by reason of the previous activities of the respondent, as it is to assume that they will be influenced *in favor of the Independent*. In any event, the "influence" of which the Board speaks is not such as "interferes" with the freedom of choice of employees within the meaning of the Act.

Finally, even if it is assumed that employees may desire to select a candidate which the employees have reason to believe is favored by the employer, shouldn't the employees be given that right? After all, it goes without saying that the primary interest of the employees is to get the highest wages and the best working conditions which it is possible to obtain. If they believe that they are more apt to accomplish this by bargaining through a representative which they have reason to believe is favored by the employer, surely they should have the right to act on such belief. Who can say that such action, based upon such belief, is not in the best interests of the employees?

IV.

The Board Should be Estopped From Attacking the Lower Court's Order Inasmuch as it at no Time Asked for a Stay of the Court's Order and the Respondent has Already Acted in Compliance Therewith.

The Board's attack of the lower court's order presents a rather anomalous situation insofar as the respondent is concerned. The decree of the lower court was entered on July 13, 1939. It embodied a permanent injunctional order which not only directed it to cease and desist from the acts thereiñ enumerated and withdraw recognition from the Independent and disestablish it, but also required the respondent to post a notice in the manner and form stated in the order.

It will be conceded by the Board that the respondent has complied therewith in every respect; that the notice was posted by the respondent as required by said order; and, that the Regional Director was duly notified of such compliance as required by the court's injunctional order *(supra* pp. 18-21).

Thus, the respondent has already complied with the injunctional order which is now attacked by the Board. In particular, it has posted the notice as required by said order. The Board now seeks a revision of the lower court's order which, if granted, would require the respondent to post notices in a different form embodying different language.

Despite the fact that the Board knew that the respondent has been subject to an injunctional order of the lower court since July 13, 1939, and that respondent has been required to comply therewith, and that respondent is still under such injunctional order, the Board has permitted said injunctional order to remain in full force and effect and has re-

quired compliance therewith by the respondent. No stay of the injunctional order was ever requested by the Board or granted by the court.

We respectfully submit that by virtue of these facts, the respondent should in no event be required to further confuse or disrupt its labor relations through the posting of any further notices. If the Board was not satisfied with the form of the notice ordered by the lower court, it should not have required the respondent to post that notice and now attempt to require the respondent to undo that act and again post notices.

CONCLUSION.

It is respectfully submitted that the decision and order of the court below was in all respects in conformity with the requirements of the National Labor Relations Act as construed and followed by this Court, and that said decision and order in all respects be sustained and affirmed.

LEON B. LAMFROM,
A. J. ENGELHARD,
Counsel for respondent.

APPENDIX.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 *et seq.*) are as follows:

SEC. 1. • • • • • • • • • • •

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to Section 6.(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

• • • • • • • • • • •

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * * * * * * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain [1] such representatives.

(d) Whenever an order of the Board made pursuant to Section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

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[1] So in original.

SEC. 10. * * * * * * * * * *

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

* * * * * * * * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or re-

straining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in Sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, Secs. 346 and 347).

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

THE FALK CORPORATION.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR
The Independent Union of Falk Employees, Intervener.

FRANK P. BURKE,
GILES F. CLARK,
Counsel for Intervener,
Independent Union of Falk Employees.

GILES F. CLARK,
Of Counsel.

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In The

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NATIONAL LABOR RELATIONS BOARD, Petitioner,

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THE FALK CORPORATION.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

BRIEF FOR
The Independent Union of Falk Employees, Intervener.

OPINIONS BELOW.

The first opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 1198) is reported in 102 F. (2d) 383, and the second opinion (R. 1208) in 106 F. (2d) 454. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 1165-1181) are reported in 6 N. L. R. B. 654.

JURISDICTION.

The decree of the Circuit Court of Appeals was entered July 13, 1939. The petition for a writ of certiorari was filed on October 12, 1939, and was granted on November 13, 1939. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

STATUTE INVOLVED.

The relevant parts of the National Labor Relations Act (49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 et seq.) deemed to have an important bearing on the questions involved are set forth in the Appendix.

STATEMENT.

Hereafter, the National Labor Relations Board will be referred to as "The Board"; the National Labor Relations Act will be referred to as "The Act"; the Independent Union of Falk Employees, a corporation, will be referred to as "The Independent."

The Board, pursuant to a charge, and an amended charge, filed by the Amalgamated Association of Iron, Steel and Tin Workers of North America, issued its complaint and notice of hearing (R. 18, 19, 20 and 21).

The complaint, in substance, alleged that respondent was guilty of unfair labor practices, within the meaning of Section 8 (1), (2), (3) and (5) of The Act.

At the time of the filing of the amended charge, a petition was filed requesting the investigation of a question concerning the representation of respondent's employees asserted to have arisen under Section 9 (c) (R. 13 and 14).

The Board ordered an investigation in this proceeding, and, thereafter, as permitted by its rules, The Board ordered that the "unfair labor practice" proceeding and the "representation" proceeding be consolidated for the purpose of a hearing (Board Exhibit "2").

The Independent filed a petition with The Board asking leave to intervene as a party in this consolidated hearing, and participated in the hearing by counsel, on receiving permission so to do (R. 26).

The Trial Examiner filed an Intermediate Report, finding that Respondent had violated Section 8 (1), (2) and (3) of the Act.

The Trial Examiner found that Respondent did not violate Section 8 (5) of the Act.

Section 8 (5) of the Act has to do with the refusal to bargain collectively with representatives of its employees, subject to provisions of Section 9 (a).

Exceptions were filed to these Findings by the Independent (R. 1161-1164).

An oral argument was heard by the Board on these Exceptions (R. 1165).

On April 18, 1938, the Board issued its Decision (R. 1166-1179), Order (R. 1180) and Direction of Election (R. 1181).

As a part of the Board's Decision, designated as "The Remedy," the Board stated (R. 1179):

> "We have found that there is a question affecting commerce concerning the representation of the respondent's employees. We shall, therefore, order an election to be held among the employees of the respondent, who were in its employ during the payroll period immediately preceding our Direction of Election in order to determine the appropriate bargaining unit or units and the representation of employees within such unit or units. We shall direct

that such election be held upon our further order after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order. In such election we shall make no provision for the designation of the Independent on the ballot."

In its order, the Board directs that The Falk Corporation cease and desist:

"(a) From dominating or interfering with the formation or administration of the Independent Union of Falk Employees, or any other labor organization of its employees, and from contributing support to the Independent Union of Falk Employees or to any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection."

It further provides that the Respondent take such affirmative action, as the Board finds will effectuate the policies of the Act, to-wit:

"(a) Withdraw all recognition from the Independent Union of Falk Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the Independent Union of Falk Employees as such representative;"

Subsection (b) provided for the posting of notices that The Falk Corporation would cease and desist from doing the things provided in paragraph (a).

In that part of the Board's Decision styled, "Direction of Election," the Board directs, among other things (R. 1181):

> "Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purpose of collective bargaining with The Falk Corporation, Milwaukee, Wisconsin, an election by secret ballot shall be conducted within such time as we may hereafter direct, under the direction and supervision of the Regional Director for the Twelfth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations (1) among the employees of said Company, exclusive of supervisory employees, draftsmen, employees in the general office, employees in the pay-roll department, powerhouse employees, and steam-driven locomotive crane operators, who were in the employ of the Company during the pay-roll period immediately preceding this Direction of Election, excluding those who since have voluntarily quit or have been discharged for cause, to determine whether or not they desire to be represented by Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge 1528, affiliated with the Committee for Industrial Organization, for the purposes of collective bargaining."

Subsection (2) provided for an election between the Amalgamated Association of Iron, Steel and Tin Workers of North America, and the International Union of Operating Engineers, by the employees of the powerhouse and steam-driven locomotive crane operators.

A petition by the Board was filed with the Seventh Circuit Court of Appeals, to enforce the Order of the Board (R. 1-6).

The Independent filed a petition with the Court asking leave to intervene in the proceeding "to assure a full and complete hearing of said petition filed by the Board, and for the further reason that the National Labor Relations

Board seeks to deny to the members of said Independent Union of Falk Employees rights guaranteed to them by the National Labor Relations Act" (R. 1194). Leave to intervene was granted by the Court (R. 1197).

It is important that the Court have in mind the fact that the Board ordered an investigation concerning the representation of the Falk Corporation's employees, asserted to have arisen under Section 9 (c) of the Act, and that the Board authorized its Regional Director at Milwaukee, Wisconsin, to provide for an appropriate hearing upon notice (Board Exhibit 1, on file with the Clerk). The Board, thereupon ordered that the "unfair labor Practice" proceeding and the "representation" proceeding, under Section 9 (c), be consolidated for the purpose of the hearing (Board Exhibit No. 2, on file with the Clerk).

An examination of the Record will clearly show that the Independent, as constituted herein, meets with all of the requirements of the Act, as a bargaining agent for employees of respondent. It is a corporation incorporated under the laws of the State of Wisconsin; its business and purpose, as set out in its Articles of Incorporation, are as follows (R. 1111):

> "3. That the business and purpose of said corporation shall be to aid its members in becoming more skillful and efficient workers; the promotion of their general intelligence; the elevation of their character; the regulation of their wages, their hours, and conditions of employment; the protection of their individual and collective rights in the prosecution of their employment; the raising of funds for the benefit of sick, disabled or unemployed members, or the families of deceased members; and for such other lawful object, or objects, for which working people may combine, having in mind the mutual aid and protection of its members, and including the right to act as the representative of its members in entering into contracts with their employer, for the purpose of collective bargaining."

Its officers are a President, Vice-President, Secretary and Treasurer, and a Board of Directors of thirteen (13) members. Its officers are elected for a period of one year (R. 1111). The Directors are elected by members of the corporation (R. 1112). The Board of Directors act as the representatives of the members in all negotiations with the respondent for the purpose of collective bargaining, affecting conditions of employment and regulation of wages, or hours, or other mutual aid or protection (R. 1113). It is governed by by-laws, which provide for an annual election of officers, and monthly meetings of the members. Monthly dues, together with an initiation fee are provided (Independent's Exhibit No. 2).

There had been several meetings of the members of the organization up to the commencement of these proceedings (R. 1067). Dues had been paid. Counsel had been retained to represent it in these proceedings (R. 1066).

The following is a brief summary of how the Independent came into existence:

A meeting of Falk employees was called on April 18, 1937, at a public hall (R. 1101). Mr. Frank P. Burke, one of the attorneys for the Intervener, attended this meeting and answered questions pertaining to the Act, and the right of employees to form an organization of their own. Nothing was accomplished at this meeting (R. 1022-1023). It was, as expressed by one in attendance, a "flop" (R. 1056).

After the meeting, one Fred Wilson asked Mr. Burke what was necessary to incorporate an organization (R. 1063). Upon being informed that three men might incorporate an organization (R. 1064), Mr. Wilson and two other men volunteered to be incorporators. These three men went to Mr. Burke's office the following day and signed the necessary incorporation papers (R. 1064).

Thereafter, and on April 24, 1937, a meeting was called by the incorporators of all who had signed applications, and

those intending to do so (R. 1109). At this meeting, those present, who were members of this organization, elected directors, who, in turn, elected the officers of the corporation (R. 1026-1027).

The Board of Directors act as the bargaining committee.

This Board of Directors is elected by the members.

The corporation is self-sustaining.

Provision is made for annual election of officers, including directors.

Summary of Argument.

The Board, in its Brief, states two different points, with many subdivisions. We feel that all may be reduced to the following propositions:

I. **The Court below, on the Record presented to it, had jurisdiction to modify the order of the Board as to the disestablishment of the Independent, and to change that part of the Board's order providing that the Independent should not appear on the ballot in an election to be held in the future.**

II. **The Court below did not pass upon the direction of election, but modified the order of the Board pertaining to the unfair labor practice proceeding.**

III. **There is no provision in the Act that gives the Board the right to permanently disestablish the Independent.**

ARGUMENT.

I.

The Court below, on the Record presented to it, had jurisdiction to modify the order of the Board as to the disestablishment of the Independent, and to change that part of the Board's order providing that the Independent should not appear on the ballot in an election to be held in the future.

Section 9 (c) of the Act is as follows:

> "Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 10 or otherwise, and may take a secret ballot of employees or utilize any other suitable method to ascertain such representatives."

The Board, by its direction, consolidated the investigation concerning representation of employees with the investigation of unfair labor practice (Board Exhibit No. 1).

An order of the Board was made, pursuant to Section 10 (c), based upon facts certified following an investigation, pursuant to Section 9 (c) of the Act.

There was a petition for the enforcement of such order (R. 1-6).

The certification and record of the investigation was included in the transcript (R. 4), and so the Court had the right, in its decree, under Section 9 (d) of the Act, upon the pleadings, testimony and procedure set forth in such

transcript, to modify, or set aside, in whole, or in part, the order of the Board (Section 9 (d) of the Act).

Counsel for the Board, in its Brief, in No. 253 of the present term, *N. L. R. B. vs. International Brotherhood of Electrical Workers and International Brotherhood of Electrical Workers, Local Union 876,* a copy of which brief has been served upon us, concedes that Section 9 (d) was intended to preclude the Courts from reviewing representation investigations under Section 9, except in connection with their review of orders issued by the Board in unfair labor practice cases, under Section 10, where such orders are based upon facts certified by the Board in representation investigations under Section 9. So, if it is to be argued that the lower court, in the instant case, did review the representation matter, the Court had the jurisdiction so to do, under Section 9 (d), inasmuch as it was done in connection with the Court's review of an order issued by the Board in an unfair labor practice hearing under Section 10.

The Board, in its decision pertaining to the complaint, as filed charging the respondent with a violation of Section 8 (5), found that neither the Amalgamated or the Independent made a fair showing that either represented a majority of the employees within the appropriate unit, and stated that there was no violation of Section 8 (5) of the Act, and the allegations of the complaint to that effect were dismissed (R. 1178).

These facts were included in the transcript and constituted facts certified to the Court pertaining to the Board's findings that neither group represented a majority.

Assume, for the purpose of argument, that there had been no question of representation, and no investigation concerning it by the Board. Assume further that the Board had made the same findings and order pertaining to the unfair labor practices, and had petitioned the court for an order enforcing such order, including the disestablishment fea-

fure. Can there be any question, under these assumed facts, that the court had the power and the jurisdiction to modify that portion of the order having to do with disestablishment, by requiring that the respondent should cease to recognize the Independent, unless and until it was chosen by a majority of its employees in an election conducted, as provided for by the Act?

II.

The Court below did not pass upon the direction of election, but modified the order of the Board pertaining to the unfair labor practice proceeding.

The Board assumes that the Court below passed upon the Direction of Election, and refers to the effect of the Decree entered by the Court to substantiate its claim.

The Court below did not, by its decree, control the conduct of the election. It modified the order of the Board pertaining to disestablishment, by directing that the disestablishment should not be of a permanent nature. The order of the Court, having to do with disestablishment, is as follows (R. 1211):

> "It is further ordered that the respondent shall post notices in conspicuous places throughout its Milwaukee plant and maintain such notices for a period of thirty consecutive days stating that the respondent will and does withdraw recognition of the Independent Union of Falk Employees as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages or rates of pay, hours of employment, and other conditions of employment, and that it has, and does, completely disestablish such labor organization as such representative, and that it will not recognize it until and unless its said employees freely and of their own choice select the Independent Union as their representative to so deal with said respondent concerning said labor disputes."

The Court did not agree with the Board that the order of disestablishment should be so drastic as to preclude the Independent from appearing on the ballot at a future election. It is important to have in mind in this connection the fact that the Board, in its order of disestablishment, went to extreme by providing that the Independent, even after it has been disestablished, should not appear on a ballot as the bargaining agent of the employees of the respondent.

A careful reading of the Court's second opinion (R. 1209) does not indicate that the Court was passing upon the "coming election." The Court said (R. 1209):

> "We are, however, not merely passing on the terms of a contemplated or coming election. We have much broader and comprehensive issues to deal with. We are disposing of a labor dispute case wherein the proceedings have gone beyond mere plans by the Board for the calling of an election. We are, upon the Board's petition, disposing of a labor dispute which involved alleged interference on the part of the employer with the selection of the bargaining agent by the employees."

The Brief for the Board, at p. 28, contains this language:

> "Assuming, arguendo, that the circuit courts of appeals, in their review of orders under Section 10, may in proper cases order enforcement upon conditions which they deem to be equitable, they 'must act within the bounds of the statute and without intruding upon the administrative province.' *Ford Motor Co. vs. National Labor Relations Board*, 305 U. S. 364, 373."

This Court, in *Ford Motor Co. vs. National Labor Relations Board*, 305 U. S. 364, 373, made it clear that, the right to review being vested in courts with equity powers, may adjust the relief to the exigencies of the case, in accordance with the equitable principles governing judicial review.

This Court, at page 373, said:

> "The jurisdiction to review the orders of the Labor Relations Board is vested in a court with equity powers, and while the court must act within the bounds of the statute and without intruding upon the administrative province, it may adjust its relief to the exigencies of the case in accordance with the equitable principles governing judicial action."

We respectfully submit that the lower court here acted within the bounds of the statute, and without intruding upon the administrative province of the Board, and so had the right to adjust the relief to the exigencies of the case, and did so by modifying the order of the Board by making provision that the employees of respondent "shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in labor relation dealings with respondent; * * *" (R. 1211).

The lower court indicated that it was doing what this court stated it might do in the case of *Ford Motor Co. vs. National Labor Relations Board*, 305 U. S. 364, namely, meeting the exigencies of the case in accordance with equitable principles, when it said (R. 1209):

> "The final disposition of this dispute calls for determination of a very vital question, namely, the right of the employees to freely select their bargaining agency."

III.

There is no provision in the Act that gives the board the right to permanently disestablish the Independent.

The authority of the Board, in reference to hearings on unfair labor practices, is contained in Section 10 (c), and is as follows:

> "If upon all the testimony taken the Board shall be of the opinion that any person named in the com-

plaint has engaged in or is engaged in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

It will be noted that this language authorizes the Board to order *the person named in the complaint* "to cease and desist from such unfair labor practice, and to take such affirmative action, * * * as will effectuate the policies of this Act."

There is no authority in this language that gives the Board the power to order others than the person complained of to take affirmative steps to effectuate the policies of the Act.

That portion of the Act, having to do with the selection of representatives, to-wit: Section 9 (c), is as follows:

"In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives."

It can hardly be argued, in fairness, that this provision, having to do with the selection of representatives, gives to the Board the right to deny to the employees the right of selecting any organization or representative that such employees choose.

The Board, in its brief, at p. 16, states that:

"The simple and effective remedy of disestablishing the company dominated organization as a bargaining representative, founded upon the decision of this Court in *Texas and New Orleans R. R. Co. vs. Brotherhood of Railway Clerks*, 281 U. S. 548, was adopted by the National Labor Relations Board, following established administrative precedent, and was

approved by this Court in *National Labor Relations Board vs. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Labor Relations Board vs. Pacific Greyhound Lines, Inc.*, 303 U. S. 272; and *National Labor Relations Board vs. Fansteel Metallurgical Corp.*, 306 U. S. 240."

In this connection, let us examine these cases.

In the case of *Texas and New Orleans R. R. Co. vs. Brotherhood of Railway Clerks*, 281 U. S. 548, a suit was brought in the District Court by the Brotherhood of Railway Clerks, and the General Chairman of its System Board of Adjustment against the Texas and New Orleans Railroad Company, and certain officers and agents of that Company, to obtain an injunction restraining the defendants from interfering with, influencing or coercing certain employees of the Railroad Company in the matter of their organization and designation of representatives for the purposes set forth in the Railway Labor Act of May 20, 1926. The Brotherhood had been authorized by a majority of the Railway Clerks to represent them in matters of their employment and their representatives were recognized by the Railroad Company. An application was made for an increase of wages, which application was denied, and the Brotherhood referred the controversy to the United States Board of Mediation. While the controversy was pending before the Board of Mediation, the Company instigated the formation of a union of its Clerks, and it was alleged the Company endeavored to intimidate members of the Brotherhood to withdraw from the Brotherhood and join the association.

The District Court granted a temporary injunction restraining the Company from committing the acts complained of. After the granting of the injunction, the Railroad Company recognized the Association as the representative of the Clerical employees of the Company. The Company refused to recognize the Brotherhood as a representative of its employees. In proceedings to punish for con-

tempt, the District Court decided that the Railroad Company and certain of its employees, who were defendants, had violated the order of injunction and completely nullified it. The Court directed that, in order to purge themselves of this contempt, the Railroad Company should completely disestablish the Association of Clerical Employees, as it was then constituted as the recognized representative of the clerical employees of the Railroad Company, and should reinstate the Brotherhood as such representative, until such time as these employees by a secret ballot taken in accordance with the further direction of the court, and without the dictation or interference of the Railroad Company and its officers, should choose other representatives. On final hearing, the temporary injunction was made permanent. The Circuit Court of Appeals affirmed the Decree, holding that the injunction was properly granted, and that, in imposing conditions for the purging of the defendants of contempt, the district court had not gone beyond the appropriate exercise of its authority in providing for the restoration of the status quo. This Court granted a Writ of Certiorari, and, in its decision, said:

> "We do not find that the decree below goes beyond the proper enforcement of the provision of the Railway Labor Act."
>
> *Texas & New Orleans R. Co. vs. Brotherhood of Ry. Clerks*, 281 U. S. 548.

A careful reading of this decision will emphasize the distinction between that case and the case now before the Court. In the *Texas & New Orleans Ry. Co. vs. Brotherhood of Ry. Clerks*, 281 U. S. 548, case, instigation of the Union was attempted after the matter had been referred to the Mediation Board, and the recognition of the Union was given after the injunction had been issued restraining the Company from recognizing it. The order of the lower court was made as a condition of purging the Railroad Company

of contempt. It was by way of restoring the status quo. The Circuit Court of Appeals for the Fifth Circuit, *Texas & New Orleans Ry. Co. vs. Brotherhood of Ry. Clerks*, 33 Fed. (2) 13, at page 17, said:

> "In dealing with the situation created by violations of the injunction, it was permissible for the court to provide for the restoration of the status quo."
>
> *Texas & New Orleans Ry. Co. vs. Northside Ry. Co.*, 276 U. S. 475.

In *National Labor Relations Board vs. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, this Court, at page 262, said:

> "The main question for decision is whether, upon a finding that an employer has created and fostered a labor organization of employees and dominated its administration in violation of Section 8 (1), (2) of the National Labor Relations Act of July 5, 1935 (chap. 372, 49 Stat. at L. 449, 29 U. S. C. A. Sec. 151, et seq.) the National Labor Relations Board, in addition to ordering the employer to cease these practices, can require him to withdraw all recognition of the organization as the representative of its employees and to post notices informing them of such withdrawal."

and at page 270:

> "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employees under Section 9 (c), even though it had ordered the employer to cease unfair labor practices."

and again at page 271, said:

> "In view of all the circumstances the Board could have thought that *continued* recognition of the Association would serve as a means of thwarting the policy of collective bargaining by enabling the employer to induce adherence of employees to the Asso-

> ciation in mistaken belief that it was truly representative and afforded an agency for collective bargaining, and thus to prevent self-organization. • • • There was ample basis for its conclusion that withdrawal of recognition of the Association by respondents, accompanied by suitable publicity, was an appropriate way to give effect to the policy of the Act." (Italics supplied)

We respectfully contend that the order of the Board, affirmed by the lower Court, disestablishing the Independent, together with the posting of notices of this disestablishment, under the rule, as laid down in *National Labor Relations Board vs. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, was an appropriate way to give effect to the policy of the Act.

It will be noted that there was no order of the Board, or of the Court, preventing the association from appearing on the ballot at an election to be held in the future.

In *National Labor Relations Board vs. Pacific Greyhound Lines, Inc.*, 303 U. S. 272, this Court, at page 273, stated:

> "The only question requiring separate consideration is whether, in a case in which the National Labor Relations Board has ordered respondent to cease certain unfair labor practices, including the domination and financial support of a company union, the facts justify its further order that respondent withdraw all recognition of the union and give appropriate notice of the withdrawal to employees."

The question of the right of the Board to order an employer to cease the *continued* recognition of an agency found to have been dominated or supported by it was the one decided in this case.

Both these *Greyhound* cases are vastly different from the situation in the instant case.

The lower Court, in this case, actually ordered the employer to cease and desist from the practice complained of,

to withdraw all recognition of the Independent Union as the representative of all or any of its employees, and to post notices to that effect (R. 1211).

The lower Court here granted all the relief sought in the *Greyhound* cases, but provided that in any election to be held in the future the employee should be free to choose any bargaining agent that he desires, including the Independent Union. All, we think, in conformity with the statement of policy as found in *National Labor Relations Act*, Section 1.

We concede that the Board has the power to order such affirmative action as will effectuate the purposes of the Act, but, as stated by this Court, in *National Labor Relations Board vs. Fansteel Metallurgical Corp.*, 306 U. S. 240:

> "The authority to require affirmative action to 'effectuate the policies' of the Act is broad but it is not unlimited. It has the essential limitations which inhere in the very policies of the Act which the Board invokes."

The question is not, as argued by the Board (Brief p. 16) the efficacy of the remedy of disestablishment of a Union, found to be the recipient (though it be the innocent recipient) of aid from the employer; outlawed by the Act.

The question is whether the employees shall enjoy the rights guaranteed to them in the Act by Section 7, the right of free choice, the right to form an organization of their own, or whether they shall be denied that right for all time because an Administration Board, in its discretion, has determined that the employer has been guilty of an unfair labor practice in assisting such organization.

> "Full freedom of association, self-organization, and designation of representatives of their own choosing, * * *"

as expressed to be the policy of the United States in the Act, Section 1, should mean just that—full freedom—not as expressed by the Court in the case of *International Brother-*

hood of Electrical Workers vs. National Labor Relations Board, 105 Fed. (2) 598, "a Hobson's choice," requiring the employee to select the organization that the Board places nearest the door.

The Brief on behalf of the Board states, at page 17:

> "The Independent is inevitably and permanently identified in the minds of the employees with respondent, which brought it into existence and established it as the employees' bargaining representative and an election in which the Independent appears upon the ballot will accordingly not represent a free choice of the employees uninfluenced by respondent."

It is argued at page 17:

> "The temporary period of nonrecognition required by the Court's decree cannot serve to terminate this identification."

The Court's decree states no period of non-recognition. It provides:

> "That the said employees shall remain free to choose at the coming election, or any future election, held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in labor relation dealings with respondent" (R. 1211).

If this language is construed as changing the Direction of Election made by the Board, it must be assumed that the Court had in mind the fact that the Board had stated that an election would only be held after the Board was satisfied that the effects of respondent's unfair labor practices had been dissipated by compliance with its order (R. 1179).

It would appear that the Board was satisfied that the effects of the respondent's unfair labor practices would, at some time, be dissipated.

The Brief for the Board concedes the possibility that the Independent and the Respondent some day will be disassociated in the minds of the employees, but adds, there is no practicable means of ascertaining when this has occurred

The Board apparently felt that it could determine when that time had arrived, when it said:

> "We shall direct that such election be held upon our further order, after we are satisfied that the effects of the respondent's unfair labor practices have been dissipated by compliance with this order." (R. 1179)

Having in mind the fact that, for practical purposes, there has been a disestablishment of the Independent since June 1937, when The Falk Corporation agreed not to recognize it as a bargaining agent, upon the request of the Regional Director of the Board (R. 89, 91, 1044 and 1071), and further, having in mind the Findings of the Examiner (R. 1139), the Decision and Order of the Board (R. 1166), the affirmation of those Findings by the Court (R. 1206), with all the attendant publicity, is it likely that one employee of The Falk Corporation, were he given the opportunity to vote, would choose the Independent against his free will? Besides all of these occurrences, The Falk Corporation has notified the Independent by letter that it refuses to recognize it as the bargaining agent for the employees of the respondent, and has posted notices of disestablishment at its plant, in compliance with the order of the Board, and the Decree of the Circuit Court of Appeals.*

At page 32 of the Board's brief, we find this statement:

> "The model was supplied by the landmark decision of this Court in Texas & New Orleans R. Co. vs. Brotherhood of Railway Clerks, 281 U. S. 548."

With that case as a landmark, let us pace off the decision of the lower Court in this case, and see how accurately it conforms to the remedy outlined in the trial court's

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* These facts will be conceded by the Board and are impliedly admitted at p. 43 of the Board's Brief.

order, and affirmed by this Court in *Texas & New Orleans R. Co. vs. Brotherhood of Railway Clerks*, 281 U. S. 548.

We find this language in the decision of the trial court in the *Brotherhood of Railway Clerk vs. Texas & New Orleans Ry. Co.*, 24 Fed. (2) 426, at page 434:

> "It is abundantly clear that the injunction issued to prevent such violation has been completely nullified, and that a remedial order should be entered, completely disestablishing the Association of Clerical Employees, as now constituted through the action of the defendant, as representative of their fellows, and re-establishing the Brotherhood as such representative, until by proper ballot the employees, without dictation or interference, vote otherwise, * * *"

The Court further ordered reinstatement of certain employees, and the reference of the matters involved to the proper law officers of the government to determine whether a proceding for criminal contempt in the name of the United States should be begun.

The Circuit Court of Appeals, in the case of *Texas & New Orleans R. Co. vs. Brotherhood of Railway Clerks*, 33 Fed. (2) 13, affirmed the Decree made by the trial court, part of which is referred to above.

Referring now to the order of the lower Court in the instant case (R. 1210-1211):

> "It is further ordered that said respondent withdraw recognition of the Independent Union as the representative of all or any of its employees for the purpose of dealing with it, the respondent, concerning grievances, labor disputes, wages, or rates of pay, hours of employment, and other conditions of employment of labor; provided, however, that the said employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the N. L. R. Act, the Independent Union to represent them in labor relation dealings with respondent; and provided further, however, that the said employees be uninfluenced or coerced in said election by the said respondent and

that the respondent refrain from exercising any influence or coercion over the employees in their selection of said Independent Union.

Provision is made in each case for the disestablishment of the organization claimed to have been dominated. In each case the court, by its decree contemplated an election by the employees, and a recognition by the employer of the agency, so elected, as the bargaining representative.

There is another very vital reason why the Independent can not legally be permanently disestablished, and the order of the Board enforced.

The order of the Board (R. 1180) is as follows:

"2 (a) Withdraw all recognition from the Independent Union of Falk Employees as the representative of any of its employees *for the purpose of dealing with the respondent concerning grievances,* labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the Independent Union of Falk Employees as such representative." (Italics supplied)

It would appear that the Board overlooked that portion of Section 9 (a), which is as follows:

"Provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

The question presented to this Court as reported in Vol. 7 of United States Law Week, page 527, of November 14, 1939, in the case of *N. L. R. B. vs. Newport News Shipbuilding & Dry Dock Co.,* No. 20 of this Term, is, whether the Board had the power to require an employer not only to cease and desist dominating or interfering with a labor organization of its employees, but also to withdraw recognition from the organization as a representative of the employees for collective bargaining purposes.

Counsel for the Board, in arguing that the Board's order was correct, relied on a statement by this Court in

the case of *Consolidated Edison Company*, 305 U. S. 197, at 236, that:

> "the *continued* existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequential violation of the Act, whose *continuance* thwarts the purposes of the Act and renders ineffective any order restraining the unfair labor practices." (Italics supplied)

It must be conceded that there is a vast distinction between a *continued* recognition of a union found to be company-dominated, and the choosing of such an organization at an election held, after the publication of notice by the employer that he cannot recognize such organization because of the finding by the Board of domination, and, therefore, must disestablish relationship with it as a bargaining agent.

If a majority of the employees of the respondent in this case, in an election conducted by the Board, would choose the Independent as its bargaining agent, it would have to be conceded that such choice was the free choice of the men. This would be in conformity with the intent of the Act, which, by its terms, provides that an organization found to have been company-dominated need not be recognized by the employee as his voluntary choice, but, after the employee has been notified of the fact that his choice of such organization, under these circumstances, need not be a binding choice, and he then chooses the same organization, he is exercising his full freedom of choice as guaranteed to him by Section 7 of the Act.

It is well, in this connection, to have in mind the fact that, as stated herein (p. 21), the Independent has not been recognized by the employer as the bargaining agent for the employees since June 1937.

CONCLUSION.

It is respectfully submitted that the Decision of the Court below should be affirmed.

Respectfully submitted,

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GILES F. CLARK,
Of Counsel.

APPENDIX.

Relevant part of National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158 et seq.) deemed to have an important bearing on the questions involved herein.

Findings and Policy.

Section 1. • • • • • •

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Section 2. "When used in this Act—

(5) "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.",

Section 7. "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Section 8. "It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in *Section 7*.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to *Section 6* (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

* * * * * *

Section 9. * * * * * *

(c) "Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under *Section 10* or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives."

(d) "Whenever an order of the Board made pursuant to *Section 10* (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript."

Section 10. • • • • • •

(c) "The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint."

(e) "The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board." • • • • • • •

(f) "Any person aggrieved by a final order of the Board granting or denying in whole or in part the

relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside." • • • •

SUPREME COURT OF THE UNITED STATES.

No. 460.—October Term, 1939.

National Labor Relations Board, Petitioner, *vs.* The Falk Corporation.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[January 2, 1940.]

Mr. Justice Black delivered the opinion of the Court.

Upon charges filed by the Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge No. 1528, the Labor Board found that respondent, an employer conceded to be engaged in interstate commerce, had, in violation of the National Labor Relations Act, interfered with its employees' free right to self organization and had fostered and dominated a company union called the Independent Union.[1] Respondent was ordered to cease and desist from such interference and domination; to disestablish the company union completely, and to post notices in its plant of compliance with the Board's order. At the same time and in a proceeding consolidated[2] with the determination of the alleged unfair labor practices, the Board, also upon petition of Amalgamated, directed an election of a representative for collective bargaining on a ballot to contain the Amalgamated and the Operating Engineers—a participant in the consolidated hearing—but not the Independent.

On petition by the Board for enforcement of its order, the Court of Appeals concluded[3] that "the order of the Board is valid and . . . its petition for enforcement . . . is . . . granted." But, of its own volition, the court provided in its final order "that the . . . employees shall remain free to choose at the coming election, or any future election held or conducted pursuant to the provisions of the . . . Act, the Independent Union to represent

[1] 49 Stat. 449, 452, Sec. 8.
[2] *Id.*, Sec. 9(c).
[3] 102 Fed. (2d) 383, 390.

them in labor relation dealings with respondent;" and that respondent be permitted to add to the notices in its plant the qualification that the Independent would be disestablished and unrecognized only "until and unless . . . [the] employees freely and of their own choice select the Independent Union as their representative. . . ."[4]

In its petition for certiorari, the Board contended that the court was without jurisdiction to review a direction of election and that, apart from the question of jurisdiction, the court had improperly interfered with the discretion given the Board by the Act. We granted certiorari to review these important questions.[5]

The first of the two consolidated proceedings before the Board was based upon the charge of the Amalgamated, a labor organization, that respondent had engaged in unfair labor practices contrary to Sections 8(1), (2), (3) and (5) of the Act. As already noted, the Board found respondent had interfered with its employees' free choice of a bargaining agent in violation of 8(1), (2) and (3). Because there was no clear showing that the Amalgamated then represented a majority of the employees, the Board did not sustain the charge that respondent's refusal to bargain collectively with Amalgamated amounted to an unfair labor practice under 8(5).

The second phase of the Labor Board's action was taken pursuant to Section 9(c)[6] of the Act, authorizing the Board to investigate and ascertain representatives of employees for collective bargaining. As expressly permitted by subsection (c), the Board conducted this investigation, itself a distinct proceeding, "in conjunction with a proceeding under section 10" and rendered its "Direction of Election" at the same time the order relative to the unfair labor practices was entered "under section 10." It was this "Direction of Election" that provided for inclusion on the ballot of Amalgamated (C. I. O.) and the Operating Engineers (A. F. of L.), but omitted the Independent. The election was not actually to be held until

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[4] 106 Fed. (2d) 454, 456, 457.

[5] — U. S. —.

[6] Sec. 9(c), 49 Stat. 453: "Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives."

after the Board was "satisfied that the effects of the company's unfair labor practices . . . [had] been dissipated by" compliance with the order to cease and desist and to disestablish the Independent.

When the Board petitioned the Court of Appeals for enforcement of its order against respondent, it filed a transcript of the entire consolidated proceedings held under 9(c) and 10(c).

Affirming the finding of unfair labor practices and order made by the Board under 10(c), the court considered its power to act at an end if nothing had been before it "but the terms of an election by the employees about to take place." But the court held, one judge dissenting, that it did have jurisdiction to attach a condition to the Board's order whereby Independent might become a candidate in the proposed election because it was "disposing of a labor dispute case wherein the proceedings . . . [had] gone beyond mere plans by the Board for the calling of an election" and therefore had before it "for final disposition, the matter of the selection of the bargaining agent." Having thus found jurisdiction in itself to make "final disposition . . . of the selection of the bargaining agent", the court thought it necessary so to condition the Board's order as to prevent the elimination "for all time [of] one of the candidates—the Independent Union."

Respondent and the intervening Independent (company) union here contend that the court below did not actually modify the Board's "Direction of Election", but if deemed to have done so, the modification was authorized under either Section 9(d) or Section 10(e).[7] They also support the result below on the ground that, as the court below believed, the Board was without power to keep the

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[7] "Sec. 9.

" . . .

"(d) Whenever an order of the Board made pursuant to section 10(c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10(e) or 10(f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

"Sec. 10.

" . . .

"(e) The Board shall have power to petition any circuit court of appeals . . . within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts busi-

company union—if purged from company influence—from the ballot in a future election to select a bargaining agent, because such proscription would impair the guarantee in Section 7 of the Act that employees may bargain collectively through representatives of their own free choice.

First. We think it apparent that the conditions attached by the court to the Board's order operated as a modification of the Board's Direction that Independent be omitted from the ballot in the coming election. In conditioning the Board's order, the court acted, as it said, "that the coming election shall be free, uninfluenced by the employer, and unhampered by any election order which eliminates [the Independent] as a contender." In effect, the court's qualification of the Board's order judicially pronounced—in advance of the election—that election methods considered "suitable" by the courts rather than by the Board must be followed. But Section 9 of the Act vests power in the Board, not in the court, to select the method of determining what union, if any, employees desire as a bargaining agent; to this end, the Board "may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives."

Nor can authority for such anticipatory judicial control of election methods be found in Section 9(d) which permits a review only in those cases in which the Board makes an order relating to labor practices found to be unfair as a result of a prior certification of a selected bargaining agent.[8] Here, the Board's order that the employer cease its unfair practices, disestablish the company union and post notices was not "based in whole or in part upon facts certified" as the result of an election or investigation made by the Board pursuant to Section 9(c). The proposed election here has not even been held and consequently no certification of a proper bargaining agent has been made by the Board. Until that election is held, there can be

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ness, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. . . ."

[8] No. 70, American Federation of Labor, et al. v. Labor Board, this day decided, pp. 4, 6.

no certification of a bargaining representative and no Board order —based on a certification, has been or can be made, so as to invoke the court's powers under 9(d).

The fundamental error of the court below lay in its assumption that there was before it "for final disposition, the matter of the selection of the bargaining agent." The court has no right to review a proposed election and in effect to supervise the manner in which it shall thereafter be conducted.[9] There can be no court review under 9(d) until the Board issues an order and requires the employer to do something predicated upon the result of an election.

Since this employer has not been ordered by the Board to do anything predicated upon the results of an election the court had no authority to act under 9(d).

Second. The company and Independent contend, as the court below held, that the Board's order of disestablishment—eliminating the Independent from the coming election even though purged of company influence—violates Section 7[10] of the Act which guarantees the right of employees to choose their own bargaining representatives. On this premise, they argue that under the power in 10(e) to modify orders of the Board, it was the duty of the court below to alter the Board's order of disestablishment so as to protect the right of the employees to choose the Independent if purged of company domination prior to the contemplated election.

On the contrary, the Board reached the conclusion that full protection of the employees' right freely to choose bargaining representatives required complete disestablishment effecting elimination of the Independent as a candidate. The findings of the Board, on which it reached this conclusion, in part were:

Shortly after the passage of the National Industrial Recovery Act in 1933,[11] respondent brought into being a company dominated union of its employees called the "Works Council" which functioned under company control until April, 1937. At that time, the A. F. of L. and the C. I. O. were making intensive efforts to organize respondent's employees in the face of respondent's hostility. As the campaign of the outside unions progressed, the company's

[9] No. 253, Labor Board v. International Brotherhood, et al., this day decided.

[10] Sec. 7: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

[11] 48 Stat. 195, 198.

personnel manager arranged, for April 12, the first of four meetings, held by Representatives of the Works Council during working hours in the company's plant hospital; in the course of these meetings there was a suggestion that the company would advance the date of a proposed wage income to influence the employees' choice of a union, and the necessity for prompt incorporation "because the C. I. O. was working in the plant" was made clear; April 18, a meeting was held off of respondent's property, but no definite form of organization was decided upon; April 20, after conferring with an attorney whom respondent's president had suggested, three employees incorporated the Independent and notified respondent that it was ready to bargain collectively for some four hundred employees; on April 23, respondent recognized the Independent as the bargaining unit for all its employees upon the statement of the three incorporators, without proof, that they represented a majority of the employees.

In summary, the Board stated that respondent had used the Independent "as a convenient weapon to prevent the exercise of its employees' rights to self-organization and collective bargaining." And the court below, in approving the findings of the Board, held that the testimony showed that the company "earnestly endeavored to prevent the unionizing of its employees and when the inevitable became imminent, it sought to dominate the formation, organization and activities of the" company union. The evidence abundantly supports the concurrent findings of the Board and the court below.[12]

From these findings the Board justifiably drew the inference that this company-created union could not emancipate itself from habitual subservience to its creator, and that in order to insure employees that complete freedom of choice guaranteed by Section 7, Independent must be completely disestablished and kept off the ballot.

Congress has intrusted the power to draw such inferences to the Board and not to the courts.[13] In order that 9(c) might be an effective means of selecting freely chosen representatives for collective bargaining as guaranteed by Section 7, the Board acted within its power in disestablishing Independent so as to bar it from consideration as an employees' representative.[14]

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[12] Cf. Illinois Cent. R. R. v. I. C. C., 206 U. S. 441, 466.

[13] Labor Board v. Greyhound Lines, 303 U. S. 261, 271; Labor Board v. Newport News Shipbuilding and Dry Dock Co., — U. S. —.

[14] Report of House Comm. on Labor, House Report No. 1147, 74th Cong., 1st Sess., pp. 17-19: "It is of the essence that the rights of employees to self-organization and to join or assist labor organizations should not be re-

Third. The court also modified the Board's order by omitting the requirement that the notices to be posted in the plant contain a statement that the company would "cease and desist" from its unlawful activities. As stated in the first opinion of the court below,[15] the purpose of the Board in requiring the company to publish notices assuring its employees that it would "cease and desist" had been "to convey to the employees the knowledge of a guarantee of an unhampered right in the future to determine their own labor affiliations." Knowledge on the part of the men that the company would cease and desist from hampering, interfering with and coercing them in selection of a bargaining agent, which the Board found the company had done successfully in the past, was essential if the employees were to feel free to exercise their rights without incurring the company's disfavor. But the notices as permitted by the court's modifying order not only failed to assure the men that the company would cease its unlawful and coercive practices, but—backed with the prestige of a formal court order—told the men that Independent, while in terms disestablished for the time being, was still available for selection by the employees. Thus the modified notices neither renounced the company's unlawful practices nor promised their abandonment, and left as a candidate the Independent, toward which the unrenounced unlawful activities of the company had been directed. We think the plant notices as modified by the court's order fell far short of conveying "to the employees the knowledge of a guarantee of an unhampered right in the future to determine their labor affiliations."

Other contentions of respondent have been considered and found without merit.

The court below committed error in modifying the Board's order. Accordingly, the cause is remanded to the Court of Appeals with instructions to enforce the Board's order without any modification.

It is so ordered.

Mr. Justice McReynolds took no part in the consideration or decision of this case.

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duced to a mockery by the imposition of employer-controlled labor organizations, particularly where such organizations are limited to the employees of the particular employer and have no potential economic strength."

[15] The court first affirmed the findings and order of the Board, 102 Fed. (2d) 383; it wrote a second opinion rejecting the Board's objection to the final decree embodying the disputed conditions to the Board's order, 106 Fed. (2d) 454.

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